RETHINKING THE REGULATION OF SOCIAL WORK

CHANGES, CHALLENGES AND CHOICES

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A thesis submitted in partial fulfilment for the requirements
for the degree of Doctor of Philosophy
at the University of Central Lancashire
October 2023

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Abstract

This PhD by Publication focuses on social work regulation in England, the recent changes in regulator and the contemporary experiences of social workers as they encounter regulation in their working lives. Drawing on seven peer reviewed journal articles and one unpublished report (all published in the period 2016-2022), the thesis considers regulation in terms of social policy, fitness to practice experiences and legal principles, but also makes comparisons with sister professions and different national and international regulators in the Health and Social Work field. In contextualising these issues, the work draws on a wide range of literature from areas such as sociological theory, the sociology of professions, comparative policy analysis and notions of professional identity to try and understand why social work has experienced recent regulatory shifts and how this stream of centrally driven innovation has created the current landscape experienced by registrants.

A range of methodological approaches are used to gather related primary data and examine existing secondary data to develop an understanding of the challenges current regulatory practice presents, including in-depth, one to one interviews with current practitioners about their experiences of regulation. Having considered these changes and the challenges they present, attention is given to the choices that could be made to improve regulation – especially from the practitioner perspective. The thesis promotes the idea of shifting the balance of regulatory activity away from fitness to practice areas to more positive, proactive, enabling endeavours that might help the profession manage the emerging complexity of contemporary practice whilst also offering greater protection to users of

services. Applying concepts of ‘upstreaming’ and ‘formative spaces’, it is argued that by shifting the regulatory gaze to practice before problems occur – rather than always dealing with the after-effects - we can better protect the public. Arguments are made for the originality and significance of the work as a whole and include reference to an unpublished report constructed whilst the author was under secondment to the UK Department for Education to develop policy options for the latest regulator, Social Work England.

RESEARCH STUDENT DECLARATION FORM

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School **Social Work, Care and Community**

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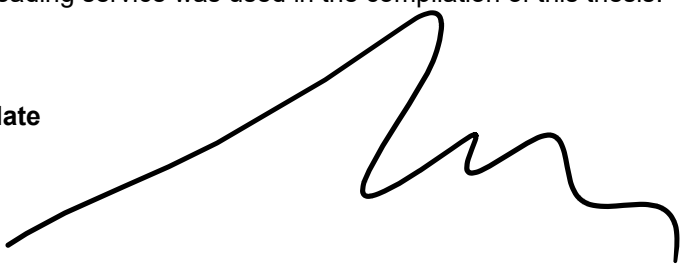

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Acknowledgments

Many thanks to Professor Ali Roy and Professor Joanne Westwood for their invaluable advice, guidance and patience during the preparation of this thesis.

Also, to those who are no longer here but I'm sure would have been proud – and would have charmingly feigned interest – Mum, Dad and my dear friend Jo Cunningham.

This thesis is dedicated to two wonderful people who remain an inspiration, my granddaughter Megan and daughter Rhiannon.

Part 1

Section 1 Introduction

Social work matters. It is a profession offering many opportunities to improve vulnerable people's challenging lives. Those charged with these complex tasks are bound by law to uphold certain standards to ensure these undertakings are done well – and so regulation matters too. Social Work England (SWE), the professional regulator for social workers in England, maintains a register of around 100,000 practitioners and those in related social work roles such as academics. Furthermore, the regulator approves all qualifying training to enter the profession – covering over 80 providers and nearly 300 courses – producing around 4000 new social workers every year (Social Work England, 2020; Skills for Care, 2022). Social Work England is a relatively new regulator, which 'went live' on 2nd December 2019. This was the latest step in a volatile journey for the profession. The previous regulator for social work was the Health and Care Professions Council (HCPC) which had held the role since 2012. Prior to that, the General Social Care Council (GSCC) had set up the first professional register in 2001. Thus, within just seven years, the profession has had to relate to three different regulators. Throughout this period – both as a qualified social worker and academic – I have sought to understand from a research perspective, the issues at play in social work regulation and how well served the profession is by these forms and shifts of regulation. The material presented here, in support of this PhD, consists of a range of outputs containing analysis which explores different elements of this regulatory space.

This thesis also presents a welcome opportunity to reflect on my journey through professional and academic roles – as well as, specifically, my research career as it relates to this thesis. It is an interesting challenge to consider my own contribution in this way – and to examine the originality and significance of the work that I have published. At the time of writing, I have published 20 peer reviewed journal articles, two authored books, two edited books and over twenty different chapters in books, as well as outputs in the professional press and other, sometimes creative, media. For example, a recent article reporting on the experiences of people with severe disabilities on benefits was accompanied by a blog (Hardwick, Hardwick & Worsley, 2022; 2022a) and funding was secured to develop and present an installation of sound (the voices of the respondents) and light with a local artist (Lindsey Lowcock). Broadly, all these outputs have related in some way to social work, whether it be examining issues related to researching the field, professional education – or its regulation. Yet, even though I have published quite widely over the years, in this thesis I focus on a set of publications which examine aspects of professional regulation, largely based around social work in England, but also nationally and internationally. I am aware – if perhaps somewhat saddened - that there is more to the process, "than stapling them together with a cover letter saying, 'Here are my articles. Hope you like them! Looking forward to being a doctor" (Nygarrd & Solli, 2021, p.6). And so, it is important to present a coherent view of the work, what it has sought to address and what it has achieved.

In essence, there are three, key research themes that bind this thesis together:

- Changes: what are the particular characteristics of social work regulation in England? Why does regulation take the form it does given its function? How can we understand the changes in regulator during this period?
- Challenges: what are the problems we can observe within the practice of regulation in social work in this professional space?
- Choices: what might we do to address those challenges?

I shall link each element of this PhD by publication directly to these research themes, demonstrating a robust and methodologically sound approach to the research underpinning the publications – as well as locating them within relevant contexts such as social policy and the experience of sister professions in the UK and internationally. Taking a broadly chronological approach, section 2 will briefly outline relevant elements of my career and other publications, before section 3 guides the reader through the outputs presented for this award. Section 4 presents a concatenation of my research and contextualises the work to answer my research themes – looking at changes, challenges and choices. Finally, section 5 extracts from the thesis the originality and significance of this work. Moving through the thesis, to avoid repetition, reference will be made to 8 outputs which form the heart of the knowledge claims. Seven of these are peer-reviewed journal articles with a further reference made to an unpublished report I produced for Social Work England on their policy options for regulation - whilst under secondment to the Department of Education. These publications are listed in Appendix 1 and numbered chronologically with the oldest as #1, through to #8. Full texts are provided in Appendix 3.

Section 2 Career Overview and Selected Other Writing

Reflecting on the work presented for this degree, it strikes me how closely linked my professional and academic roles are to the publications I am presenting. The adage 'write what you know' applies especially well for me. This section seeks to provide a platform for understanding how the work presented for this award sits within my career and other, selected, published outputs that correspond in some ways to this thesis. A personal bibliography is attached as an Appendix (2).

My first degree (BSc. Social Science and Administration) was awarded by the London School of Economics in 1983, with my MA Social Work at UEA in 1987. I followed a Probation pathway and was subsequently recruited by Greater Manchester Probation Service for whom I worked for the following ten years, latterly as a Senior Probation Officer for Training. Following this I worked in Stockport Social Services Department (in their Training Department). My first three peer reviewed journal articles were written during my time in Stockport and considered issues broadly related to social work education and its regulation, dealing with the government's review of the Central Council for Education and Training for Social Work (CCETSW) (Glynn, Worsley et al., 1998), fairness in joint marking between academics and practitioners (Knight & Worsley, 1998), and the role of creativity in the assessment of competence (Knight & Worsley, 1999). These pieces set in motion themes and approaches to research that would continue throughout my writing. The first article examined CCETSW – which, though not strictly a regulator, was a statutory authority and

performed essentially similar functions. At that time, its stability (running from 1970 through eventually to 2001) appeared to present a natural state and clearly, as I have subsequently witnessed three new regulators in a considerably shorter period, undoubtedly a trigger for this thesis' work.

I then moved to my first role in academia – running the Merseyside Practice Teaching Programme from John Moores University (JMU). This was a particular area of interest for me, leading to my first joint authored book (Beverley & Worsley, 2007) and acting as Chair of the National Organisation for Practice Teaching (2001- 2004). At JMU, I also developed a close writing partnership with Dr. Louise Hardwick which continues to this day. My publications with her have examined the relationship between social work education and the voluntary sector (Hardwick & Worsley, 2003; 2007) – but have also explored the methodologies of social work research. We have co-authored an article and book around practitioner research (Hardwick & Worsley, 2011; 2011a) and, in 2015, another book, 'Innovations in Social Work Research' (Hardwick, Smith & Worsley, 2015) – an edited text presenting elements of contemporary social work research and for which I was the lead.

In 2002 I became Head of Social Work at Manchester Metropolitan University (MMU) and later moved to the University of Chester as Head of Department in 2006 – gaining my chair in the process of appointment (Professor of Social Work). In 2009 I accepted a new role as Head/ Dean of the School of Social Work at the University of Central Lancashire (UCLan) and in 2014, became Executive Dean of Faculty. National level involvement continued with roles

on the Social Work Reform Board (2011) and, from 2012-2015, I was both Chair of The College of Social Work's (TCSW) Endorsement Panel and President of the Association of Professors of Social Work. It is this succession of senior academic management and professional leadership roles that developed my deep understanding of social work education – and higher education – especially around the interplay of professional and academic regulation as it affects those areas. These experiences were the foundational building blocks for my understanding of the nexus between standards and delivery - how one constructs a portfolio of concrete learning opportunities to meet abstract regulatory requirements. Making this leap into what one might term the 'pragmatics' of regulation is a vital cog in my understanding as it places an emphasis on the realities of implementation of regulatory constructs and the broad politics of higher education. These national roles are mentioned particularly as they relate directly to the thesis and my direct participation in the construction of contemporary regulation of social work in England. Whilst TCSW is no longer with us, my leading role in devising, delivering and implementing a new, national form of regulation for qualifying programmes – afforded me a deep insight into the politics of regulation.

As noted, by 2009 I had begun work at UCLan and this is the base from which all future publications happened. Articles published around that time initially stemmed from my work at Chester and took on a distinctly multi-professional theme. For example, Dutton & Worsley (2009) examined nurse and social work practice (field) educators' experiences of multi-professional working. Through in-depth qualitative interviews we identified two groups: the 'doves' and 'hawks' – where doves appeared keener to work across professions

in comparison to the hawks who patrolled and guarded professional boundaries. This was my first substantial use of 'latent' coding approaches which would be used more in later research. Worsley et. al. (2009) involved authors from both Chester and UCLan, the article examined data on students' experiences of assessment and detected how students experience assessment in higher education through the lens of earlier educational experiences – and how this produced a subsequent 'expectation' gap between academics and students, with the latter thinking that the former has all the answers. Two papers related to a single research project were next: Ward et al. (2017) and Mayall et al. (2014). Both articles drew on a small sample of in-depth qualitative interviews with care leavers in social work education. The articles examine a range of issues related to curriculum, disclosure, identity management and support that broadly needed to be handled better by their North West host social work programmes. These investigations clearly focused on the challenges that can be observed in social work education, but were addressed mostly to the academic community rather than regulation per se.

As my leadership responsibilities increased, my 'other' readings in this period often focused on management and higher education – notably around the entrepreneurial university (and its critique). Writers such as Collini (2012) on 'HiEdBiz plc' examined the university as a business whilst others, such as Gibb et al. (2002; 2013) tempered the notion with constructs around 'public value' and the enhancement of legitimacy through engagement around the offer to local communities. Gibb et al. (ibid) drew in turn from Schumpeter (1983) who wrote around the 'creative destruction' necessary where innovation destroys the old business to create the new. These concepts and ideas were extremely helpful in

understanding a perspective of disruption and change that chimed with what was then happening with social work regulation in England. But it is also important to note that my role as Executive Dean also brought me into direct contact with several professional, statutory, and regulatory bodies (PSRBs). For example, in the Business School, Accounting alone related to Institute of Chartered Accountants in England and Wales (ICAEW), the Chartered Institute of Management Accountants (CIMA) and the Association of Chartered Certified Accountants (ACCA). This wider perspective afforded an insight into what one might term the socio-political functions of regulation, which I subsequently discussed in many of my outputs from an understanding of research on the sociology of professions (for example Friedson, 1994; Malin, 2017; Beck, 1992; Harmon et al. 2013) and work which reflects on the 'risk society' and the usefulness of institutionalised mitigation – more of which later.

An important facet of my managerial experience is the direct involvement over several years, with fitness to practice proceedings related to student conduct with social work (and other) programmes in university settings. In all the roles noted above, I have chaired various permutations of FTP and disciplinary hearings. Dealing personally with (student) practitioners through all these channels presented an opportunity to experience at first hand the personal impact of both the proceedings and routes to panel decisions. This undoubtedly formed a starting point for my interest in how this 'played out' within PSRB structures. It also introduced me to a literature around the persistent weaknesses of the system when viewed nationally – especially notable in the poor experience of Black social work students being 'fast tracked to failure' (Tedam 2014, see also Bartoli et. al. 2008). On a

more personal level, the impact of these proceedings - emotionally and professionally - have been directly observed – and for obvious reasons also affected me. In the most serious cases students can be removed from the social work course or, indeed from the university. Such outcomes can be devastating- affecting the people concerned for many years in to the future. These systems need to be open to both critique and change. I reflect that these experiences have mirrored – many of the research findings I would go on to create and consider. I will discuss later observations around my methodological approach, but I will make an initial link here to principles from feminist approaches that resonate with my research that include a focus on change, an awareness of diversity (and, of course, the androcentric nature of traditional research) and also positionality (Nielsen, 1998, Bukamal, 2022). All of these interests were fortuitously to collide in my next career steps.

In late 2017, I stood down as Executive Dean, and spent the best part of a year in a split role: developing and implementing Equality, Diversity and Inclusion (EDI) strategies for UCLan – and then being seconded into the Department for Education (DfE) as part of the Social Work England Implementation Group. This built on work I had done with the Social Work Reform Board (2011) and my support of some elements of the Croisdale-Appleby Review (2014). My role during this secondment was to develop policy options around qualifying training regulation for the DfE – affording me a pronounced and particular insight into the construction of the day-to-day functioning of state led regulation, its relationship to central government departments and the construction of primary and secondary legislation in relation to regulation.

Since 2018 I have been the School Research Lead in Social Work, Care and Community, taking phased retirement in September 2021, registering for this PhD and simultaneously accepting a part time role with the National Institute for Health Research as their Speciality Research Lead for Social Care in the North West Coast region. I have also been an Inspector with SWE since its inception. It's been quite a journey thus far – mostly enjoyable! - but, to borrow a phrase from Braun & Clarke (in relation to thematic analysis), '…the best adventures are rarely linear' (2022, p. 104).

My most recent publications have moved into new areas such as a book chapter examining public value management and social justice (Worsley & Wylie, 2020). Stone & Worsley (2021) is a peer reviewed journal article examining the experiences of the UK's first ever cohort of social work apprentices – a new route through qualification. I worked with my co-author on a small-scale survey-based study which received a lot of interest in the sector as it was the first report of its kind. Bringing us right up to date, my three most recent publications are Wilson & Worsley (2021) largely driven by the first author's research around working class and poor families' experiences of education in Cumbrian coastal towns – applying Lareau's theory around the accomplishment of natural growth. July 2022 saw the acceptance of an article (Hardwick, Hardwick & Worsley, 2022), examining the findings of a series of qualitative interviews on the experiences of severely disabled people on benefits. My most recent article is the 'final' one in my series on regulation (Worsley, 2022) accepted in November 2022 – and it is to this theme I will now turn.

Part 2

Section 3 Publications for this degree

I will now present the texts which form the basis of the PhD by Publication. First, I will provide a brief synopsis of the outputs and make some general comments about methodology, before providing a critical overview of the work and contextualising it within the literature. A later section will extract from these seven peer reviewed articles (#1- #4 and #6- #8) and one report (#5), elements of originality and the significance of the contribution this work makes to the field of study. Six of the seven publications are written by a small group of authors, and I especially acknowledge the contribution of Ken McLaughlin who is a recurring co-author throughout. The first four articles (#1- #4) are written, primarily by the initial team, Worsley, Leigh and McLaughlin, each taking a turn as Lead Author. The second group - the final three articles (#6- #8) - are all Lead Authored and designed by myself, with the Options Report (#5) being sole authored, as was the final piece (#8) which stemmed, in large part, from reflection during this PhD process. A detailed breakdown of my contributions to each text is provided as an appendix (1). Five of the seven articles are published in the British Journal of Social Work (BJSW), largely because this was always felt to be something of a natural home for the research, being fundamentally professionally orientated and thus where its audience was likely to be most receptive. BJSW is, of course, a well-respected and established journal[1]. The journal also has an international

[1] as of Feb 2023, IF 2.352 and 5 year IF 2.513

reach and I have always consciously sought to expand this seemingly narrow line of enquiry beyond national borders.

Article #1

McLaughlin, K., Leigh, J. and Worsley, A. (2016) The state of regulation in England: from the General Social Care Council to the Health and Care Professions Council, *British Journal of Social Work* **46** (4), pp. 825-838.

The first article in this septology establishes many of the themes in the following works – the broad context of (policy) change, especially in social work regulation, is identified and an understanding, largely drawn from the sociology of professions, around the journey of the profession and its regulation is offered. Triggered by the implications of a shift from specialist (social work) regulator (GSCC) to generic regulator (HCPC), the article also offers a critical approach around the different experiences that social workers face regarding Fitness to Practice (FTP) i.e., they remain significantly more likely to face FTP proceedings than staff in other sister professions. Furthermore, an awareness of certain imbalances in the processes of FTP proceedings is raised and this concern, which we might locate in understandings of both social and natural justice, persists throughout these works.

Article #2

Leigh, J., Worsley, A., McLaughlin, K. (2017). Fit to practise or fit for purpose? An analysis of the Health and Care Professions Council's 'fitness to practise' hearings, *Ethics and Social Welfare*, **11** (4), pp. 382-396.

This article moves firmly into a more research minded approach, examining publicly available secondary data (see also #3, #5 & #7) and subjecting it to thematic analysis (Braun and Clarke, 2006). The piece is a detailed examination of (34, selected from 93) published FTP hearing minutes, focussing on practice-based failings - rather than disciplinary matters related more overtly to the protection of the public. The conclusion rooted the notion of power in the regulatory relationship and ended:

> Nevertheless, the role of the HCPC in sanctioning those whose misdemeanours were, to a greater or lesser degree, affected by organisational failings and lack of resources runs the risk of individualising and scapegoating the social worker (Leigh et al., 2017).

This article was published when #3 was 'forthcoming'.

Article #3

Worsley, A., McLaughlin, K., & Leigh, J. (2017) A subject of concern: the experiences of social workers referred to the Health and Care Professions Council, *British Journal of Social Work,* **47** (8), pp. 2421-2437.

This article, the first in this sequence with myself as lead author, brings a qualitative, thematic research approach to the issue of FTP experiences in social work and, as such follows neatly on from Article #2. Based on a sequence of 8, 'in-depth', one-to-one interviews – some face to face and others via online methods - we explored social workers' experiences of FTP hearings. Our sample (gathered through an advert in Community Care) included respondents who had been struck off – as well as those where No Further Action was taken – and at other points between these two extremes. By some measure, the most striking finding was around the severe, emotional toll of this process – regardless of outcome – which we presented in the respondents' own words, and I feel was especially impactful:

> I became depressed very, very quickly and ... I just didn't know what to do. I was, I was just bereft really .... This is my, this is my professional livelihood, it's my life and at that point I was, I mean I'd, I'd actually attempted suicide (Megan) p13.

Article #4

Kirkham, R., Leigh, J., McLaughlin, K. and Worsley, A. (2019), The procedural fairness limitations of fitness to practise hearings: a case study into social work, *Legal Studies* **39** (2), pp. 339-357.

This article has a relatively modest contribution from myself. The lead author, Kirkham (now a Professor of Law), rightly takes the lion's share of credit for this piece and its form exhibits significant differences from the other outputs presented, linked to its legal audience and orientation. Beginning from concerns around the significantly low levels of attendance by social workers at FTP hearings, the piece examines the procedural fairness of the process, drawing on evidence from Articles #2 and #3, and adding an awareness of case law around the issues. This article explores the weaknesses and limitations of the transposition of 'court-like' models to FTP processes. My contribution was focussed around sections dealing with the regulatory environment of social work (p342), the case study outlines (p346) and the issues of credibility, remorse and insight (p348).

Report #5

Worsley, A. (2019) *Education and Training Regulation for Social Work England: Options Report,* Unpublished Report, Social Work England.

Following written agreement from Social Work England and the Department for Education, I am able to submit, as part of this thesis, the unpublished report I completed for SWE

following my secondment. This substantial, sole authored, 16,000-word document is a sizeable and comprehensive report on the general state of social work education and its regulation in England - produced, of course, under some (nominal) guidance from the DfE. It is rather extraordinary reading it again after several years to see how comprehensive it is. Drawing some areas out for particular note (in sympathy with the reader), Sections 3, 4 and 5 situate social work education in contemporary policy developments related to Higher Education and the (then relatively recent) national reviews of social work education. Section 6 reports on feedback from a series of national workshops I ran to engage the sector (involving academics, practitioners and service users) regarding some of the policy options surrounding education and training. Sections 7, 8 and 9 take existing data sets and attempt to construct workload projections – and timings - for the regulator with regard to the approval of programmes and the transition from one regulator to the new one. Sections 10 and 11 bring this all together and present policy options around all existing (HCPC) standards (10 and detailed in Appendix 1) and approval processes (11 and detailed in Appendix 2) - and offers an evidence base (where possible) of implications of some policy options. Section 12, at the request of Colum Conway, then putative CEO for SWE, offers some initial thoughts around visioning for standards and the regulator. Some months after leaving my secondment, I returned to SWE and was told that the report was referred to as 'the bible' by SWE officers taking these issues forward. The report was submitted as a draft in October 2018 and signed off in Spring 2019. Social Work England went 'live' in December 2019 accepting many of my recommendations, which I shall consider below – including a brief report of an interview done as part of this PhD by Publication process with Colum

Conway (CEO SWE) and Tracy Watterson who was the DfE Lead for the Social Work England Implementation Group and moved into SWE as an Executive Director.

Article #6

Worsley, A., Beddoe, L., McLaughlin, K. and Teater, B. (2020) Regulation, registration & social work: an international comparison, *British Journal of Social Work,* **50** (2), pp. 308-325.

This and the following two articles, all proceeded with me as lead author and were all instigated in design and concept by myself. Using a Comparative Policy Analysis (CPA) model, the (social work regulation) experiences of England are compared via detailed case studies with New Zealand and New York State in the United States – written with co-authors in my 'regulation network' based in those countries. Theoretically, the piece attempts to develop a model for such comparisons and a structure for analysis. Here, CPA is deployed to identify three, key comparative themes: (i) clarity and risk, (ii) definition, and (iii) constellations and public interest.

Article #7

Worsley, A., McLaughlin, K., and Shorrock, S. (2020) Protecting the public? An analysis of professional regulation: comparing outcomes in fitness to practice proceedings for social workers, nurses and doctors, *British Journal of Social Work,* **50** (6), pp. 1871-1889.

Conceived at the same time as article #6, this piece sought to examine differences between social work and its sister professions, namely nurses and general practitioners. Supported in

terms of statistical analysis by Shorrock, the findings were quite stark. Based on considerably larger samples of publicly available FTP data than before, this piece was able to take a UK national view of the issues and found social workers facing apparently less lenient outcomes and significantly less likely to be either present or represented at hearings. This piece aimed to raise awareness of the issue, targeting change in the Health and Social Care 'regulator's regulator', the Professional Standards Authority (PSA) and concludes with a call for a more upstreaming approach.

Article #8

Worsley, A. (2022) Moving the river: rethinking regulation for social work, *British Journal of Social Work,* bcac213, https://doi.org/10.1093/bjsw/bcac213 Published: 16 November 2022.

And so, to the conclusion. Whilst previous articles had developed arguments for change in one way or another, they had all looked essentially backwards – at what had happened. This article has its emphasis on moving forward, making theoretical and practical cases for 'upstreaming' and 'formative spaces' to improve what regulation could be like if done differently. It was initially written during the early period of registration for this degree. Feeling the benefit of extremely supportive supervision, I identified what was 'missing' from a first draft – and realised the lack of application to the 'real world' weakened the piece. I augmented a second draft with a sequence of one-to-one interviews with experienced social workers, most of whom inhabited roles related to regulatory function. Somewhat surprisingly, I found evidence of strong elements of formative work in the field.

Methodology

I have made notes above about the methodological approaches of these outputs (all the relevant article sections on methodology are written exclusively by myself) – and earlier about my writing around social work research approaches (Hardwick & Worsley, 2011a; Hardwick, Smith & Worsley, 2015). But I wish to conclude this section with some broader comments of concatenation to reflect on my identity as a researcher and what has emerged, over time, as a broad sympathy under an interpretivist methodology. I believe knowledge to be socially constructed, guided by the researchers' beliefs and feelings about the world (Denzin & Lincoln, 2005). There are some authors I would point to as especially influential in my development as a researcher. First is the work of Robson (1998; 2016) and his commitment to 'real world research', explicitly addressed to applied research in the professional workplace (which he pleasingly refers to as an 'away fixture'). If Robson's approach is certainly part textbook, my second author wrote differently (at first) and more specifically around qualitative research and the analysis of talk and text. Silverman's (1995; 2020) work provided me with a more rigorous and demanding approach to analysis that also warmly embraced qualitative approaches. More recently, Helen Kara's work (2020) has underlined the importance of creativity and transformative research approaches.

My interest in meanings rather than 'facts' stems in part from an earlier rejection of positivist approaches which simply didn't seem to 'fit' – or apply – to my experiences as a probation officer and later social worker. Ontologically, this relationship between knowing and being has always seemed rather pivotal – who I was (social worker) has always seemed

to me fundamental to how I experience and generate knowledge. And so, interpretivist approaches which can promote the researcher as a person within their research have a fundamental appeal. Therein the researcher can locate a particular relationship to the people studied and be a 'part' of the research process whilst providing a sense of believing knowledge to be socially constructed, guided by the researchers' beliefs and feelings about the world (Denzin & Lincoln, 2005).

Broadly, within that frame of understanding, I have used a range of secondary and primary data collection methods including in depth face to face interviews and online interviews (#3 & #8). Perhaps unsurprisingly, a lot of my research has entailed the analysis of secondary data, often grey literature stemming from regulators (#1, #2, #5, #6, #7). In some cases, especially where frames of understanding or a particular theoretical lens is being applied, this has sometimes resulted in essentially a 'back to front' research design, largely driven by what data was known to be available (Hakim 1982; 1987 and Robson, 1998). In a similar vein one might also note a tendency towards a deductive approach, perhaps most overtly in Article #8 where theoretical constructs, such as upstreaming and formative spaces, shaped interview schedules and thematic analysis (Aronson, 1995; Tuckett, 2005). My expertise in policy analysis as 'method' for knowledge generation has, I would argue, developed throughout the outputs and arrived notably at #6 within an overt frame of approach, critically analysed and developed – although I still feel I have a lot to learn there. Quantitative methods do not form a main feature of my research but do form a central plank of Article #7 where descriptive and inferential statistics are used to analyse publicly available data based upon a conceptual content analysis and coding framework (Hsieh &

Shannon, 2005). But, of course, this still essentially performs what could be considered a subjective analysis.

Pivotal for me is the work of Braun & Clarke (2006; 2022) who are directly used and referenced in Articles #2, #3, #7 & #8. And whilst it is tempting to talk at length about their work and influence, perhaps I can point mostly to their development of reflexive thematic analysis (RTA). Their promotion of a 'Big Q' qualitative sensibility sits well within my world view (see originally Kidder & Fine, 1987). RTA also affords the possibility of inductively and deductively orientated approaches that suit this body of work where inductively orientated primary data collection (e.g. #3) allowed an approach to be informed broadly by feminist research principles that are 'giving voices' to the lives and experiences of – in one sense – a marginalised group. Conversely, Article #8 is explicitly a deductively orientated approach to data analysis. Of course, these are not black and white separate approaches and overlap within a creative, subjective space. Similarly, indices around semantic and latent analysis where the former explores meaning on a more surface, stated level than underlying or implicit levels of meaning, can be accommodated with RTA and are seen more as a continuum than an either/or.

As Braun & Clarke (2022) note: in good RTA, strong interpretive practice is able to locate data in its wider context and, as Willig notes, 'the process of interpretation poses significant ethical challenges because it involves a process of transformation' (Willig, 2017, p. 282). Certainly, the use of my secondary FTP data in particular has led to a significant

transformation from its original purpose – and that has propelled me to ensure a transparency when describing research approaches in the articles. More broadly, this body of research is largely straightforward in terms of typical ethical issues, providing few pronounced ethical dilemmas – although all research was, of course, granted institutional approval (usually through UCLan) where required. In some cases, potential tensions were 'designed out' – such as in Article #8 where Information Sheets and Consent Forms expressly sought to ensure personal experiences (as subject) of FTP processes were not discussed. This was not the case with Article #3, by far the most emotionally challenging example in this body of work – for the interviewer as well as, of course, the interviewee – as the process uncovered the pain felt by social workers in the FTP processes. Here, the methodology section notes a temporal, narrative approach (Chase 2008; Bryman, 2004). Its overt intent to pursue an empowering process (Elliott, 2005) founded on promoting a 'narrative of resistance' (Mishler, 2005) where we sought to ensure respondents were understood as 'more than' their FTP processes (see also Hardwick, Hardwick & Worsley, 2022). It was important that we shared with respondents the work as we went along, up to and including the finished article – always respecting their views. These interviewees live with us long into the future, their stories remaining vivid in memory as does, I feel, our presentation of them in print. I remain very grateful for their bravery and engagement.

Limitations

Most of the research presented can be characterised as small scale, employing low numbers of respondents and purposive sampling. It is only in #7 that national level data is critically examined in depth. In large part this also reflects the funding received which was only once

available – and deployed for that purpose. Extensive use of secondary data is made throughout, and together with grey literature there are attendant issues surrounding the absence of peer review and appropriate use of that data that must be noted (Pappas & Williams, 2011).

This research generally offers a qualitative analysis of – and reflection on -regulatory issues: largely, explicitly and purposefully, from a practitioner perspective. Inevitably, in bringing particular matters into focus, other areas are marginalised. For example, as noted above, there is a marked absence of attention to the service user perspective (and experience) of regulation and professional malpractice. This is acknowledged as a significant issue – with the HCPC data from 2019 (the last year social work was with them) showing that 46% of all concerns matters were raised by the public (HCPC, 2019). Examining the data more closely (HCPC, 2019a) we also see that social workers accounted for 67% of all the referrals from the public across the HCPC professions – and have, by a *huge* margin, the largest percentage of cases dropped by the HCPC as not meeting the requirements to proceed (60%). It is unhelpful to speculate what may cause this and what, for example, might be the level of malicious referrals this masks – but it is certainly a quite unique feature of the FTP experience of social workers. This issue is touched on in articles #2, #3 and #7. Regardless of that issue, the point remains that the service user voice is largely silent in this particular body of research and the limitation is acknowledged. This is not a feature of my work in general and recent research by myself (around disability) has focussed exclusively on the service user voice (Hardwick, Hardwick & Worsley, 2022, 2022a). Similar issues of limitation arise regarding the employer perspective – another group whose voice is unheard in this

particular body of work and whilst they feature heavily in the research (e.g. #2, #3. #4 & #8), they are viewed from either a secondary data, distanced perspective – or from a practitioner perspective.

To return to the practitioner, a further limitation could be considered the lack of attention to personal characteristics (e.g. mental health or substance use) and their relation to FTP. There are a number of points for reflection here. In some articles these issues were deliberately 'designed out' as the focus was on organisational issues rather than personal (#2, #3 & #8). That said, article #3 explicitly examines the mental health issues resulting from the FTP process. It also important to note that these categories are not clearly delineated in the data published by the regulator – and inevitably will overlap with each other to greater or lesser extents. For those reasons, no significant claims are made that rely on such a distinction. Indeed, elsewhere, these distinctions are evidently not made, and all FTP cases are essentially treated equally (#1, #4, #6, #7 & #8). The broad body of work has never shied away from acknowledging that there will always be cases where remedial disposals are inappropriate and 'striking off' is necessary where practitioners cannot - and ought not - to be practicing.

It is important to reflect on whether these limitations affect the overall analysis and I contend they do not and the approach remains valid throughout. Choices are made and defended in each output. Whilst a practitioner focus is broadly retained, other perspectives and angles are embraced to give a cumulative wider perspective. The emphasis in four of

the outputs (#1, #4, #5, & #6) is overtly on policy and its development. Alongside that, two of the articles (#2 & #3) are clearly practitioner orientated, whereas a far broader perspective and light is shone on social work regulation elsewhere (#7 & #8) – with the final piece promoting evidence of how employer and profession can work well together to the benefit of service users. Of course, whilst these pieces are now complete, research to further investigate other perspectives is always to be welcomed and encouraged.

Section 4 Concatenation

Professional regulation's antecedents date back to medieval guilds and the early forms of occupational licensure. In more modern times, the terrain has become somewhat confused with overlapping concepts of 'registration', 'accreditation' and 'licence to practice' (Trebilcock, 2022). Professional regulation is now a complex phenomenon rather resistant to a neat, all-encompassing definition. This thesis will focus on 'statutory regulation', which

> … refers to professions that must be registered with a professional regulatory body by law. Employers must check that… professionals are registered with an appropriate regulated body by law and are fit and licensed to practise in their chosen profession before they start work (NHS Employers, 2022).

Thus, professional regulation fundamentally relates to the apparatus designed by state appointed regulatory bodies to shape occupations governed by law (DBEIS, 2021). Commonly, the performance of the professional task is restricted to those with 'titles'

related to particular qualifications. The apparatus designed by the regulator tends to focus on points of entry (typically via achievement of an approved qualification) and maintenance of standards of professional conduct linked to a 'register' of professionals.

Ostensibly, regulation is there to provide and ensure standards of professional practice that safeguard the users of services and the broader public. Social Work England, like many regulators in the sector has, as a first, principle aim – the 'protection of the public' (SWE, 2019). However, the 'user voice' in regulatory structures appears limited and, as we shall see, other beneficiaries are clearly evidenced – notably employers and central government (#1, #2, #3, #4, #7 & #8). The extent to which regulation operates to the profession or practitioners' benefit appears limited and a critical appraisal of who benefits – or is disadvantaged – by the current operation of social work regulation is a recurring theme throughout the outputs submitted for this award.

It must be acknowledged that the focus of this thesis is on the apparatus of professional regulation as it affects social workers. As this thesis shall show, there is relatively little literature examining social work regulation – and even less considering the experiences of practitioners under regulatory standards. The corollary of this approach is a lack of focus on the way regulation operates in support of the users of services – a group that ostensibly, regulation seeks to protect (discussed further in Limitations above). In seeking to address this gap in the literature the practitioner (and profession) focus is retained throughout. It is important that regulation is effective and embraced by the profession it guides. As I have

noted, recurring and significant changes in the regulator for social work – and how it operates - have threatened the quality of this relationship (#1, #2, #3, #7). I shall identify through this thesis where regulation might improve and how that might specifically also act in a way that more directly benefits users of services that regulation claims to protect (#8).

Changes

State sanctioned social work regulation in England began with the GSCC in 2001, until the 'bonfire of the quangos' (Sparrow, 2012) was lit by the nascent Cameron government and signalled its demise. Its functions were added to a non-specific health regulator, especially 'rechristened' HCPC, in August 2012. 'Care' was added to the title. By January 2016, government announcements indicated a new regulator, Social Work England, would be created and it eventually 'went live' in 2019 (#6). During these changes I have sought to identify and understand the key elements of professional regulation, mainly as they applied to social work in England. In presenting my publications for this thesis, it is clearly important to situate them within frames of understanding and existing research to best see how my work engages with and adds to the 'learning conversations' taking place around the topic (Wisker, 2017, p.173). If we step back a little from a narrow concern with professional standards , we can detect three areas of context for regulation (and my research) where important learning conversations are taking place: first is the socio-political dimension (policy and law); second, professions – as distinct from occupations; third, is the apparatus of regulation. Whilst the presented research encompasses each element, the focus of all but one of the articles is the apparatus.

Socio-Political

Professional regulation, within our definition, necessitates legal instruments and these in turn rely on government policy. How and why particular choices are made is clearly a complex matter and simple explanations – around, for example, social control - will not suffice (Blakemore & Griggs, 2007). One must question in who's interests professional regulation operates? Most regulatory bodies will refer in their mission statements to *public* interest, primarily used in the sense of protecting the public from malpractice. In attempting to unpack this notion, I believe it's important to start with the concept and management of risk. 'Risk society' broadly refers to how modernity organises its response to risk - and key authors on this include Giddens (1991) and Giddens & Pierson (1998) who chart society's ever-increasing preoccupation with the future and safety – which transforms into constructs of risk. Similarly, Beck (1992), although more interested in environmental elements of risk (such as pollution), also locates his analysis firmly in modernity and the systematic management of hazards and insecurities. However, the 'public' are not an active voice in constructing and managing risk at a policy level. Elected government acts on their behalf – so we can ask ourselves – what is the interest of government and (more elusively) how does it cohere with public interest? Hood et al. (2001) helpfully move the analysis into exploring the 'blame game' and the manipulation by governmental and regulatory, organisational structures to manage the risks to which it deems the public are exposed. In turn, in Hood's (2011) analysis, costly 'risk regulation regimes' can become a by-product of these structures. The ideas above, are located in all the material presented and offer a consistent theoretical presence in my research (see for example #6, #7, #8). As an illustration, the HCPC spends around half of its entire annual budget (£25M in 2015) on FTP processes (#3) which, of

course, affect miniscule percentages of those on their registers (HCPC, 2015). Parallel data from SWE is not yet available.

Moving into arenas of law and policy, authors such as Harvey (2005) observe the neo-liberalist element of regulatory activity, whilst Haney (2012) locates a change in approach to regulation of the professions within New Labour's political agenda. A driving issue in my research around regulatory law is the principle of justice and I especially note the influence of Rawls' work on 'justice as fairness' and his concept of political liberalism and the legitimate use of political powers (see for example Rawls, 1971; 2005). Of course, as Rawls argued for the equal treatment of people and, in our case, the equal treatment of social workers alongside sister professionals, other principles of justice are also applicable such as proportionality and mercy. These principles underpin much of the material I present here, noting especially #7, #3 and #2. Furthermore, Fitness to Practice processes clearly rely on what is termed a 'high court' like model and the procedural fairness of the process was the central focus of one paper (#4), critically analysing the rigour of the investigation process amongst the need for transparency and public accountability.

Professions

The literature surrounding the sociology of professions reflects a wide and long-standing field, but certain authors have been influential on my thinking, and I note especially Friedson (1975; 1994). Friedson is seen as a 'founding figure' in medical sociology (Calnan, 2015) and focused his early writings on professional autonomy and control. He was building

on writers such as Vollmer & Mills (1966) and Caplow (1954) who pushed for an understanding of the dynamics and process of professional change. The sociology of professions has several trends within it: trait theorists and professionalisation theorists being most prominent – with Friedson (ibid) falling largely within the latter – with his interest in the process by which occupations become professions. A common feature of that journey is the exchange of occupation control for regulation which enables a claim of professional status. I wish to draw out one element of Friedson's writing around the control of knowledge in the workplace:

> I suggest that the central issue of professional power lies in the control of work by the professional themselves, rather than control by consumers in an open market or by the functionaries of a centrally planned and administered firm or state (Friedson, 1994, p.44)

The level at which a profession is able (or willing) to exert control over dominant forms of knowledge, culture and autonomy in the workplace has been a very important area of reflection for me around professional regulation and the relationship between the worker doing their job and the regulatory controls to which they are subject. This matters because of identity. Professional identity is part of personal identity. A particularly striking quote that I used in my earliest writing, captured this interest:

> Professional work is never viewed solely as a means to an end, it is an end in itself… the absorption in the work is not partial, but complete, it results in total personal involvement. The work life invades the after-work life and the sharp demarcation

> between the work hours and the leisure hours disappears. The professional is a person whose work becomes his life (Greenwood, 1957, p.15).

Of course, there are many writers in the field of professional identity (e.g., Dent & Whitehead, 2002; Baxter, 2011; Beddoe, 2013). Simpson et al. (2020), examined social worker's professional identity within a Hegelian perspective, but Greenwood's expression I have always found most illuminating, enabling me to make a direct link between professional regulation and who we are as professional workers. Regulation is about people. This principle is profoundly illustrated in an interview with a social worker reflecting on the emotional toll of her FTP proceedings:

> "… this is my… this is my professional livelihood, it's my life…" (#3 p.13)

Therefore, when we examine the seemingly sterile apparatus of regulation, it is essential to retain an awareness that it affects people's lives in deep and profound ways. Standards governing professional practice - and the way they are implemented – affect who we are, how we work and how we live. This notion is embedded within the current standards themselves, where Standard 5.2 requires that registrants must not, 'Behave in a way that would bring into question [their] suitability to work as a social worker while at work, or outside of work' (SWE, 2019).

Apparatus

There is a wide range of literature around professional regulation in its broadest sense and this continues to be a growing phenomenon as more and more elements of the international workforce become subject to regulation. For example, Trebilcock (2022) examines various facets of regulation in the US, noting that 22% of the workforce must now hold some form of licence. But it's the social work arena where my interest in 'apparatus' lies. The international literature in this field is limited, with Hussein (2011) perhaps the first author to look specifically at social work regulation across Europe, finding a wide variety of different structures for the apparatus – matched by a wide range of different constructions of the social work role. There are also some authors looking at this currently on an international level. I would especially note one of my co-authors, Beddoe, whose research largely focuses on social work supervision, but has also examined the shifts in social work regulation in her native New Zealand (e.g. Maidment et al., 2020; Beddoe, 2014). Elsewhere, Canada has also produced some work in this area (such as Heron, 2019 and Adams, 2016).

In narrowing my focus to social work regulation in England, I come to the real heart of my area of research. I must first point to David Jones as an important author who, in this broad time frame, has written as regularly as myself – but relatively seldom through peer reviewed journals in recent years. His knowledge and range are considerable (see for example Jones, 2020). In the last ten years I would also point to Furness (2015) as the writer initially examining the contemporary FTP area, noting the (then recent) changes in regulator and the rise in FTP cases. Since then there have been relatively few authors in this field apart from

Banks and Van der Gaag, who have worked both separately and in collaboration with others to examine similar strands of the operation of FTP, often around paramedics as well as social workers (Banks et al., 2020; Gallagher et al., 2018; Austin et al., 2018). I note that van der Gaag is a former Chair of the HCPC and some of her research was also funded by this body. Banks et al. (2020) looked at (social work) FTP data from 2014-16 in a large-scale piece of research orientated strongly towards recommendations for improving the FTP processes. However, these articles essentially try to understand why so many social workers are referred to the regulator for FTP issues. Rather disappointingly, they tend to acknowledge organisational failings whilst focussing action points on public education and supervisory quality. The emphasis here is on reducing the large numbers of public and employer FTP referrals for social workers. As such the work is not as well developed from the practitioner perspective as mine nor, perhaps, as well theorised as it might be. Nevertheless, several of these author's important works are referenced in my writing, making a strong contribution to an understanding of the flaws of the FTP process. My research forms part of this contribution from academics, perhaps examining with a freer, more critical hand, the failings of the different systems implemented up to and including the current regulator. As with van der Gaag and others, I have sought to contextualise understanding against other sister professions (#7), have added a greater depth to international comparisons (#6) and especially with #8, focussed more resolutely on the ways forward that incorporate the voice of the practitioner.

It is important to note here the pronounced influence of 'grey literature' in the field of (social work) regulation. Whilst academia has been a relatively quiet voice around social

work regulation, bodies such as the PSA, HCPC, SWE and so on, produce large numbers of reports, reviews, consultations, blogs and evidence summaries that, in themselves, offer the largest single body of material around professional and social work regulation. Notable examples would include the PSA's output (e.g., 2015; 2017) which has been hugely influential in my work – and helped me form a title for this thesis! Similarly, papers such as the gargantuan Law Commission report on the regulation of Health and Social Care professionals (Lloyd Jones et al., 2014) provide vast quantities of largely procedural and technical detail. These are mentioned as they are profoundly influential on the development of regulation in the UK – and whilst one may criticise the lack of peer review and frequent absence of methodological clarity – it would be foolish to do anything other than ensure familiarity with this material (Pappas & Williams, 2011).

This overview has sought to contextualise my research and situate it within the ongoing development of knowledge around social work regulation, but perhaps most importantly I now look at how effectively it is working and how regulation might respond to the challenges it is facing.

Challenges

What challenges does research observe in social work regulation? The question, in part, depends on perspective and how wide the lens used when observing the phenomenon. Thinking most broadly to begin with, there is a common concern about professional regulation in general. Parker (2009), writing about psychology, notes the dangers in using

regulation to establish compliance and conformity with prevailing mores, whilst Postle (2012) talking about therapy, talks of the tendency to produce 'tick-box' approaches that are essentially unsuited to complex professional dilemmas. The literature also suggests that these functions can lead to an extension of reach or 'mission creep'. Hood's (2011) analysis, noted above, theorises that costly 'risk regulation regimes' become a product of regulatory structures. These ideas are located in all the publications presented with this thesis and offer a consistent theoretical presence in my work (see for example #6, #7, #8). As an illustration, some regulators have been criticised around extension of function in the use of registrant subscriptions. For example, the British Dental Agency publicly criticised the General Dental Council for using such funds for undercover 'entrapment' investigations into registrants (BDA, 2021). For social work, this extension of function has also presented some issues. SWE, in an attempt to fast-track disposal (surely with positive intentions), recently received serious criticism from the PSA around its new processes for 'accepted outcomes' (i.e. where the FTP registrant agrees to a disposal without the need for a hearing). The PSA investigated and its report found that some of its decisions provided 'insufficient protection to the public', had no means of review and, noted that;

> There is a danger that registrants who are not represented may agree to more serious outcomes than would have been the case if they had had the matter heard by panels. There is a danger that this may lead to perceptions that the system is unfair (PSA, 2021, summary).

Given the very low levels of representation social workers benefit from (#7), this has to be a serious concern. Beyond this there are broader contexts and I note the shifts in social work

regulation in England which can be (cautiously) linked with child protection scandals (see for example Manthorpe & Stanley 2004; Vogel, 2012) and (more concretely) the need to construct risk management strategies for central government, especially noting Hood's (2001; 2011) work around 'blame prevention re-engineering' (Hood, 2001, p.41). One can certainly observe a relationship between the timings of regulatory shifts in social work and the cases of Victoria Climbie and Peter Connolly (Laming, 2003; 2009). Other elements of the government's agenda in this context ought to be mentioned – especially around the move to privatisation in childcare – so eloquently commented on by Ray Jones (Jones, 2014; Jones & Butler, 2019). The nature of the relationship between regulator and government (especially around financial support) is markedly different between the HCPC and SWE (noted in #6, #7 & #8) and we wait to see if SWE can establish financial independence from the DfE. Currently, more than 50% of SWE's income is from DfE grants (SWE, 2022a) whereas the HCPC operated entirely on subscription income. It should be remembered that the DfE initially sought to place SWE directly under government control (McNichol, 2016). These examples are presented to suggest the social work 'agenda' in England appears to be often driven by children's and families social work issues and thus, departmentally, by the Department for Education. The DfE are a significant, if shadowy, presence in my research, most notably visible perhaps in Article #8 which examines the 'hard' and 'soft' regulatory outputs from the DfE and notes:

> The resulting picture suggests a devotion to centrally driven innovation and (soft) regulatory activity with an apparently unshakeable belief in the power of both to improve delivery (Worsley, 2022, p.5).

Correspondingly, a review of the existing literature on social work regulation found only 'limited evidence' that registration lifts professional standing or indeed, protects consumers (McCurdy et al., 2018). So, a range of these structural issues exist, but I wish to now reflect on the practitioners' challenges which are clearly not the same as those of the actual regulator and so, welcoming Becker's (1967) honest embrace – 'whose side are you on?', I argue my research comes primarily from the side of the practitioner, whether this be examining the emotional toll of FTP proceedings (#3), the equity between social workers and sister professionals (#7) or, looking for ways forward with practitioners themselves (#8). Drawing on my peer reviewed research outputs, there are many significant problems with social work regulation – for social workers. Initial writings examined the tension between individual and organisational liability (e.g., #1) where high caseloads and poor working conditions are rarely seen as mitigation for poor practice – whilst the employer appears to embrace the use of the regulator as a performance management device helping them manage conflict with employees (#1, #2, #3, #4). Furthermore, evidence was gathered about the disproportionate numbers of referrals from social work employers compared to other professions (#2). This article also highlighted potentially marked differences in FTP rates between workers in children and families' settings (higher) than in adults.

Other challenges are more centred around the operation of the apparatus and the transparency of its data gathering. Two pieces of research have highlighted the failure of the regulator (HCPC and SWE) to publish data on FTP issues around race, gender and other protected characteristics (#2, #7). Other challenges here include the (perceived lack of) competence of the panels hearing FTP cases (#2, #3). It is important to highlight two

fundamental findings here. Article #2 observed an issue around lack of attendance at the actual hearings and the common absence of representation. Article #4 used these findings to critique the procedural fairness of FTP processes in social work from a legal perspective. The matter was delved into in considerable detail and scale in #7 to find quite shocking data that some 93% of social workers did not attend their hearings and were not represented in 90% of cases. I found that this compares markedly with, for example, Doctors where 70% did attend and 58% were represented (#7). This suggests a worryingly high level of disconnect between regulatory function and our profession. Furthermore, my evidence suggested a difference in outcomes for social workers, as they faced frequently harsher penalties from panels who appeared to be more punitive and less likely to see the registrant as a public asset (#7). Within social work itself, male workers were statistically more likely to be receive harsher penalties. I reviewed the literature on this area to see why this might be (see for example: Adams, 2003; Simpson, 2004; Lupton, 2006 and Tennhoff et al., 2015) but did not manage to unearth a satisfactory explanation and this remains a 'subject for further research'.

Choices

This final section will contextualise my work around positive suggestions regarding what, given the changes and challenges I have outlined above, we should do about regulation. Of necessity, this section is aimed most fully at the regulators themselves as they construct and operate its machinery. It is important to say that most of my outputs retain some element of constructive critique. Articles #2, #3 and #4 conclude with suggestions around improving the experience of registrants in the FTP process, reducing the length of time taken for the

proceedings to complete and ameliorating the combative legalised process of its panels and their composition (#3, #4). Recommendations have been made around procedural fairness and 'thicker' process design (i.e., aimed at greater emphasis on engagement and notions of justice) including early resolution models (#4).

The need for some route of referral for the consistent organisational problems arising from the registrants' experiences was also encouraged, as was the need for more attention to be paid to the support (including financial) for registrants going through FTP (#3). It remains sadly typical that registrant fees pay for all regulator FTP processes, including witness attendance – but the actual fee-paying registrant (and their witnesses) is offered nothing. Variations on Indemnity/ Professional Insurance do exist (as a government requirement) across Health and Social Care including all the professions covered by the HCPC - but the requirement does not extend to Social Work (HCPC, 2018).

Within education and training, Report #5 provides a full account of significant options and policy recommendations – which are dealt with separately below.

In more recent peer reviewed pieces, different choices were promoted with article #7 encouraging the PSA to be more rigorous and transparent with their data monitoring around protected characteristics and to encourage moderation between professions to ensure fairness for social work. But perhaps it is article #8 that most directly engages with the presentation of choices as to how best to proceed with social work regulation. My

research drew on the existing theoretical concepts of upstreaming and formative space. 'Upstreaming' is a notion drawn from US public health research, first coined by McKinley (1979; 1986), who notes how health services focus on the point where an illness is so severe that, to use the analogy, the patient has fallen in the river. Far better, he argues, to focus preventative activity upstream to stop people getting wet. FTP processes are all about being wet. And yet, by far the largest conglomeration of data around problems in social work practice is held by the regulator – yet it appears to do nothing to analyse and mobilise all that data into improving practice or the qualifying curriculum. Similarly, 'formative spaces' is an idea from Fischer (2012) arising from his examination of multi-professional teams in Leeds, UK. Finding 'organisational turbulence' he suggested that the teams best suited to positively adapt to change were those where formative spaces – essentially fora for discussion of practice issues – were promoted and supported by the organisation. These ideas seemed especially constructive as ways forward for social work regulation in England where they might act as a vehicle for 'upstreamed' data. I interviewed senior social workers (most of whom had a specific organisational role related to regulation) about what was happening 'on the ground'. I found an appetite for focussed, upstreaming activity (e.g. learning from thematically analysed FTP data) and a range of what might be termed 'formative space' activity aimed at supporting practitioners around performance management, before the need to involve SWE.

Section 5 Originality and Significance

I believe I am recognised as a leading academic authority on professional regulation in UK social work as a result of research conducted over more than 20 years – and this is clearly evidenced by the eight outputs outlined above, as well as my broader corpus of work. My programme of regulation research has utilised a broad range of research methods and has generated new knowledge evidencing important issues of professional practice, personal experience, gender difference, national and international comparison – as well as creating comparative perspectives on sister professions. Furthermore, this research has sought to offer new ways of thinking around social work regulation in England. Taken together, I believe my research has demonstrably influenced the development of social work regulatory policy and the promotion of good practice in England.

Originality

Social work professional regulation is a volatile policy space in England – presenting a 'zeitgeist' of fluidity and a vehicle of opportunity that this sequence of research outputs has ridden. In this context, the contemporary, 'new' events that have been examined in the body of work offer a clear path to originality as there simply isn't another author who has followed these developments in the way I have. My first task is to highlight the production of new knowledge that these outputs contain and discern some themes regarding an approach to originality. The production and interpretation of new findings is, prima facie, an aspect of originality. Taken as a whole, the body of work has substantial elements of new data collection. Articles #3 and #8 gather primary, qualitative, interview data and subject it

to analysis. Articles #2, #4, and #7 take existing publicly available secondary data and subject it to analysis to form new understandings. Finally, Articles #1, #6 and Report #5 are essentially an analysis of policy developments at national and international levels – and again these have generated new knowledge and understandings.

I seek to make no great claims regarding methodological innovation – although the knowledge I have generated reflects a relatively rarely trodden path in bringing research rigour to the analysis of professional social work regulation. Certainly, my preferred approach around the analysis of primary interview data, Thematic Analysis, is both well used and highly respected. Subjecting publicly available data to interrogation in this field must also be noted as an aspect of originality. This is evidenced in Article #2, #4 and especially #7; with the latter, the coding and conceptual framework developed enabled a detailed statistical analysis of publicly available fitness to practice data across different professions that has not been undertaken on social work in this way before.

Finally, regarding new knowledge, I argue that I have developed theory around regulation in two important ways. First, in the use of Comparative Policy Analysis in Article #6 which consciously develops and applies a methodology for the comparative study of social work (and other) professional regulation between nations and states. CPA is, of course, a well-known approach – but has not been applied to professional social work regulation before. In particular here, I point out how I have adapted the work of Marmor (2017) and Radin & Weimer (2018) for a social work specific form of CPA and the article acts not only as a

worked example, but also as a model for future similar analysis of social work regulation internationally. Second, in my work around upstreaming and formative spaces in Article #8, I have applied and developed theoretical constructs from two different areas (Public Health and Social Work practice) to a new area, namely social work regulation. I acknowledge that these ideas have been linked with professional regulation before (PSA, 2017), but have not been researched and applied directly to social work regulation.

Significance

Having made these claims for originality, I will now examine evidence I have with regard to significance. My research, when considered as a body of work, provides the only in-depth examination of the regulation of professional social work in England over the last seven years. No other author has brought to this study the triangulation of a range of methodological and theoretical tools to understand these changes and reflect on their similarities and differences to sister professions and wider international approaches. Other areas of significance relate more directly to new knowledge generated by the innovative application of a range of methods to relatively under examined (regulatory) phenomena outlined above.

I believe I am the first person to gather and analyse personal experiences of the Fitness to Practice process in social work and use them to critique and, most importantly, influence the current modules of regulatory practice they are subject to (#2, #3, #4, #7). Creating awareness of the failings of regulation from the practitioner perspective affords a debate to

take place that can shape attitudes towards the choices made. In many ways this is a secret garden of a topic – not one that people want to talk about, especially in personal terms. This makes it all the more important to articulate the issues in ways which raise the focus above individual failings and into systems and structures that can ensure regulation operates fairly and proportionately. My dissemination strategies have always included the professional press to ensure my research reached a practitioner audience. For example, I have worked closely with writers at Community Care to ensure my research got a broader audience beyond academia and the regulatory sector (e.g. Haynes & Turner, 2019; Samuel, 2020). In turn this has helped shape part of the debate around the transition from HCPC to SWE. Carter, writing in Community Care in November 2019, just ahead of SWE going live, makes specific reference to how 'very conscious' the HCPC were of the emotional impact of FTP and the need to reduce the time and stresses of the process (Carter, 2019). All these are themes promoted through my research.

I feel there is also significance in developing (and understanding) the model of comparative analysis for the international community to examine changes in social work regulation (#6). Building from those who developed the model, this application to social work is, I believe unique and helpful to the international social work academic community. The challenges in comparing what ostensibly seem similar issues of professional regulation, require a model that can accommodate significant variations in history, context and culture. This model, applied to different countries across three continents acts, at the very least, as a helpful contribution for others in an examination of where different countries are 'at' in terms of professional regulation.

I have constructed a detailed piece of research that highlights statistically significant differences (in e.g. gender) within publicly available FTP data – within and across the professions of social work, nursing and medicine – these aspects are currently not (publicly) examined by the regulator (#7). This research offers a significant contribution to issues of equity in social worker regulation which I argue will shape future scholarly thought about the analysis of this area.

Finally, I believe I am the first author to bring the concepts of 'upstreaming' and 'formative spaces' to bear on English social work regulation and apply them to this sector (#8). These concepts are not new – and, indeed, have been noted elsewhere in the broader regulatory landscape. However, I have promoted them in formative stages of the development of the new regulator, seen them come to fruition in SWE's current practice (see below) and also, I am the first to explore how these concepts might frame current practice in the field.

Attempting to evaluate significance through the lens of 'influence' is, of course complex. Clearly, being a relatively lone voice on the challenges of social work regulation has resulted in a certain reputation within the professional and academic sectors. On a basic level of statistics, ResearchGate informs me that my work (as a whole) has a 'research interest' score of just under 92%, (including such data as over 3,200 reads and nearly 170 citations) - higher than 64% of all members. Rather more concretely perhaps, my expertise in this area led directly to my secondment into the DfE Social Work England Implementation Team to

develop policy options for them around Education and Training. The resulting report (#5) – together with my earlier research – has had a significant influence on the development and, to some extent, the understanding of policy in social work regulation.

Significance and Social Work England

I was appointed by the DfE as the 'Strategic Lead for Social Work (Education and Training)' for a six-month secondment in the summer of 2018. With both 'pre' and 'post' activity, the whole period of engagement lasted around 18 months from March 2018 to September 2019. I was engaged to produce policy options regarding Education and Training and the (unredacted) Report (#5) was produced as the required output. Both SWE and the DfE have given their agreement for this report to be included in this submission, solely for the purposes of examination.

Policy Options

It is important first to note how recently these options have come to fruition. As SWE went 'live', of necessity, it basically performed what was termed a 'lift and shift', i.e. transferred existing HCPC standards into the SWE format. So, the 'new' and first real SWE Standards came into effect as recently as September 2021. Of course, there is a lot of 'clear blue water' between a policy recommendation from myself and the final decision about what to include and hence I am being modest in claims about my influence on the eventual

decisions. However, I will briefly note several, significant areas where recommendations from myself moved into published standards;

- The 'unification' of HCPC SETs and SOPS into one set of standards was a strong recommendation from myself (Report 5, para 9.6).

- The enhancement of the involvement of service users in general programme operation and admissions (Report 5, Appendix 1 Para: admissions). I identified this area as a 'quick win' (demonstrating a strong value base likely to gather favour) and it was actually the only substantial change made when the HCPC standards were first ported over to SWE.

- Lead Social Workers – an especially striking example, where my reading led to an interest in the role of 'Lead Midwife' then in use with the NMC. This option was tested out in my national workshops and proved popular. Now every single social work course has a Lead Social Worker with a responsibility for the professional integrity and quality side of the social work courses – around e.g. curriculum and fitness to practice.

- Options around the strengthening of the role of stakeholders (service users and employers) in the management of HEI programmes moved forward, as did the more overt use of number planning on admissions. There was also a recommendation to consider tightening up definitions of statutory placements which SWE also proceeded to do.

- A recommendation to ensure External Examiners were on the register was followed.

As a reminder of the scale of these changes, I note they affect every single social work programme in England. There are around eighty HEI providers of social work education,

most providing more than one qualifying route. These programmes enjoy approximately 4000 student enrolments per year nationally (Social Work England, 2020; Skills for Care 2022). These standards therefore affect each single one of these stakeholders.

To try and get direct feedback on the significance of my contribution, I interviewed Colum Conway (CEO of SWE) and Tracy Watterson (Executive Director, SWE). The interview took place on November 29th, 2021, via Teams, and was recorded (by SWE). I took notes from the interview (after the event) to capture just a few examples of feedback around my contribution to the development of SWE. Conway, for example, commented on the overarching framework of my report and its ability to engage and situate itself in the sector:

> … (it) was a really strong framework, so we only needed to build on that and develop the standards - and the research and information you gave meant that that has been a relatively calm area of work and it's been well received by those in it, and we have been able to progress in the right sort of way.

The conversation also moved on to some informative observations from my respondents about the culture of SWE, its relationship with the DfE and the part I played in that, with Conway noting;

> I think it's important to reflect back on your contribution, because some of the battles that you won or unearthed around independence and the connection to the Department [of Education*]* and the connection to government and how that had to be clear in the minds of the social work profession and the HEI sector – they were

> really important because we were able to build on them… so many important principles were established there which meant the Department were much more open to be able to go in particular directions and they didn't try to close us off and I think that dates back to those early battles.

This quote is pleasing as it affirms my contribution around a research informed expertise about professions, identity, organisations and the 'realpolitik' background to change. It is also very pleasing to note how my research helped in part to raise the profile of the problems with fitness to practice regimes under HCPC. The subsequent efforts made by SWE to tackle some of the issues can offer further evidence of the significance of my contribution. The conversation covered some of the progression in these areas – with, for example, new triage processes on FTP cases now removing around 50% of cases (SWE, 2020; 2022), and again, culturally, certainly sharing an approach to the process of these hearings - that was promoted heavily in Articles #2, #3 and #4;

> … panels are focussed on working safely, not on punishing people in an adversarial way, they are focused for the most part on trying to get social workers back into the workplace safely and swiftly… [beyond] that HCPC lose/ lose situation… people felt that lack of connection to themselves as social workers... after the legacy work, we are starting to come out into a really exciting, dynamic regulatory space (Watterson).

This was another especially heartening part of the conversation and whilst we await conclusive data (due to its early stages) the indications are good for how SWE has moved

this system forward. In continuing this positive, forward-looking approach, I picked up on the notion of upstreaming and formative space which had been promoted in Report #5 (para. 12.5). I outlined some of the recent findings from my research about formative work going on in different guises within Local Authorities and Conway noted the work in which SWE was already engaged;

> … we're trying to tap into that and help guide it… We've put a project together and there are four different strands to that work at the moment including a pilot running in [a northern city] in terms of trying to work with that Local Authority – how can we support what they are doing and how we can learn from it? It's good to see that 'real space' developing. An awful lot can be achieved with local resolution.

and then Watterson added;

> … the work you did was really important and when I'm listening to [Standards Team Leader] and the team talk now, the size and complexity of providers and their diversity, it's something that you explored in all of your work, they had that as a starting point… you gave us so much in the work you did.

Conclusion

I have sought, through this thesis, to present an overview of a body of work created and inspired by a professional and academic journey - as I tried to understand the factors shaping social work regulation, the changes it has gone through, the challenges its operation presented and the choices it could make for better outcomes. Focussing on seven articles linked to professional regulation, I have presented evidence that identified their originality and significance and attempted to highlight within that some links between my research and the regulation of the social work profession in England. This body of work represents a significant contribution to a relatively modest body of academic literature examining these issues – perhaps surprising given their importance. My work within the DfE has demonstrated a particular impact on qualifying training in England, helping to shape the regulation and monitoring of social work courses right at the very beginning of a new regulator's journey.

These outputs have also looked beyond national social work structures, into comparison with sister professions and social work regulation on an international level, finding that the particular qualities of English regulation suggest a range of disadvantages for social workers in this country that need to be tackled. I believe I have made the case that it is important to consider regulation from a personal and professional standpoint- as well as the legislative and policy dimensions – because fundamentally I believe that this is what will work best for providers and users of services;

> Helping stop practitioners from ‘falling in the river’ is likely to improve services more than reactive downstream endeavours (Worsley, 2022, p.15).

One innovative, committed, professional social worker told me about the need to retain a perspective where organisations (and regulators) can support and develop practitioners to improve practice, not simply punish poor practice (#8);

> [... we are] trying to create a climate where it’s OK to make mistakes, but it’s how we learn and how we move forward from that ... how we can see that change rather than just always staying the same and always doing things the same way ... (ibid. p.11).

In many ways, the jury is still out with Social Work England, it is simply too soon to tell how its new practices - its own attempts to do things differently - are impacting on its key functions. But it is clear that it is trying to be better positively - with processes that are seeking to address some of the challenges I have outlined. I wish it every success – because it matters to the practitioners and the people they serve.

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Appendix 1 Authors Contribution Table

Article Number	Article	Agreed candidate % contribution*	Worsley notes on personal contribution
8	Moving the river: rethinking regulation in Social Work British Journal of Social Work published online https://doi.org/10.1093/bjsw/bcac213 Worsley, A (2022)	100%	Sole author
7	Protecting the public? An analysis of professional regulation: Comparing outcomes in Fitness to Practice proceedings for social workers, nurses and doctors. British Journal of Social Work 50 (6) 1871-1889 Worsley, A., McLaughlin, K., and Shorrock, S. (2020)	80%	Sole author of concept for article Sole author of broad design of research. Sole author of Introduction and Literature Review. Construction equally with Shorrock of coding framework. Sole author of all three Discussion sections and Conclusion
6	Regulation, Registration & Social Work: An International Comparison British Journal of Social Work 50 (2) 308-325 Worsley, A., Beddoe, L., McLaughlin, K. and Teater, B. (2020)	60%	Sole author of concepts for article Sole author of research design of article e.g. comparative policy analysis. Sole author of Case Study on England within that framework. Sole author of all sections of analysis and conclusion. Sole editor of article.
5	Education and Training Regulation for Social Work England: Options Report (unpublished) Worsley, A. (2019)	100%	Sole author
4	The Procedural Fairness Limitations of Fitness to Practise Hearings: a case study into social work. Legal Studies 39 (2) 339-357 Kirkham, R., Worsley, A., McLaughlin, K. and Leigh, J. (2019)	20%	Equal author contribution to concept for article Provider of contextual information around social work policy and procedures especially relevant to Section 1(b) and 3(a), (b), (c) and (d). Input on case studies and credibility and remorse elements. Equal contributor to Conclusion and application of findings to professional setting.

3	A Subject of Concern: The Experiences of Social Workers Referred to the Health and Care Professions Council. British Journal of Social Work Vol 47 (8) 2421-2437 Worsley, A., McLaughlin, K., & Leigh, J. (2017)	50%	Equal author contribution to concept for article Sole author of research design Sole author of Introduction and Methodology Lead author on Findings, Analysis and Conclusion Written almost entirely by Worsley who acted as sole editor
2	Fit to Practise or Fit for Purpose? An Analysis of the Health and Care Professions Council's 'Fitness to Practise' hearings. Ethics and Social Welfare. 11 (4) 382-396 Leigh, J., Worsley, A., McLaughlin, K. (2017).	33%	Equal author contribution to concept for article Equal author contribution to research design, analysis and conclusion Sole author of sections on Method, Analysis and Methodological Considerations Scale of contribution noted in ordering of authors.
1	The State of Regulation in England: From the General Social Care Council to the Health and Care Professions Council. British Journal of Social Work 46 (4): 825-838 McLaughlin, K., Leigh, J. and Worsley, A. (2016)	33%	Equal author contribution to concept for article Lead author on sections: regulating Social Work and Disciplinary Processes Equal author contribution to conclusions

*formally evidenced in correspondence from all authors to UCLan Registry

Appendix 2 Author Bibliography

Chronological list of candidate publications

Peer Reviewed Journal Articles (*submitted for this thesis)

*Worsley, A. (2022), 'Moving the river: rethinking regulation in social work', *British Journal of Social Work*, published online, bcac213, https://doi.org/10.1093/bjsw/bcac213.

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Worsley, A. and Wylie, R. A (2020) 'Public value management and social justice', in Wylie, R., *Public Value Management Institutional Design and Decision for the Common Good*, London, Rowman & Littlefield, Chap 5.

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Appendix 3 Outputs

British Journal of Social Work (2015) 1–14
doi:10.1093/bjsw/bcv030

The State of Regulation in England: From the General Social Care Council to the Health and Care Professions Council

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Abstract

In this paper, we analyse the way in which social work, as a profession, has coped with and responded to the various forms of regulation to which it has been subject in England. First, we briefly detail the rise of external regulation of the professions, discussing both the rationale for, and criticisms of, such developments. Second, we take a closer look at developments within social work and the operation of the General Social Care Council (GSCC)'s conduct proceedings from its inception in 2001 until its dissolution in 2012. Third, we focus on the Health and Care Professions Council (HCPC) and consider how it has begun its regulation of social workers since it took on this responsibility from August 2012. We conclude by outlining some of the concerns we have as well as discussing reasons as to why we feel this area of work needs to be explored further.

Keywords: Accountability, capability, conduct, HCPC, regulation, social work

Accepted: March 2015

Introduction

On 31 July 2012, the General Social Care Council (GSCC), which, since 2001, had been the body responsible for the regulation of social workers in England, was abolished as part of what was termed 'the bonfire of the quangos' by the Conservative/Liberal Democrat coalition government

(Sedghi, 2010) with all of its powers transferred on 1 August 2012 to the Health Professions Council (HPC) which, in recognition of the expansion of its remit, changed its name to the Health and Care Professions Council (HCPC). The addition of social workers to its regulatory responsibilities means the HCPC now oversees the training, professional standards and conduct of sixteen professions, covering a broad range of practices such as, inter alia, arts therapists, biomedical scientists, dieticians, and speech and language therapists. Social workers are numerically by far the largest single group in this disparate collection of 'allied health professionals'.

The HCPC's main function is to protect the public. In its own words, it states:

> ... we set standards for the education and training, professional skills, conduct, performance, ethics and health of registrants (the professionals who are on our Register); keep a register of professionals who meet those standards; approve programmes which professionals must complete before they can apply for registration with us; and take action when professionals on our Register do not meet our standards (HCPC, 2013, p. 5).

Therefore, if a registered professional fails to meet the required professional standard, they can be called before a 'Fitness to Practise' hearing where the ultimate sanction could be that the registrant's professional registration is removed. This is especially pertinent given that all the professions listed above have 'protection of title', meaning that only those on the HCPC's register can call themselves by their respective professional title. Thus, in terms of social work, anyone struck off can no longer practise as, or even call themselves by their erstwhile specialist professional title of, a social worker. In determining fitness to practise the HCPC, as did the GSCC before it, uses the civil standard of proof when determining the outcome of its conduct hearings. The decision, therefore, rests on the *balance of probabilities* rather than the higher criminal proceedings standard of *beyond reasonable doubt* (HCPC, 2012).

In addition to the HCPC, there are similar regulatory bodies such as the General Medical Council , General Dental Council, Nursing and Midwifery Council and the General Pharmaceutical Council, all of which regulate the standards and conduct of doctors, dentists, nurses, midwifes and pharmacists, respectively. This is somewhat contradictory in that professional self-regulation and autonomy were once seen as indicators of a profession's standing (Haney, 2012). Over recent years, there has been comparatively little criticism of the external regulation of the professions. However, from a historical perspective, such consensus is a relatively recent phenomenon. In the past, the concept of external regulation has provoked much debate and disagreement amongst professional bodies, mainly because of the concomitant prospect of the loss of autonomy by which professions were able to regulate themselves.

This paper details the growth of professional regulation with particular focus on the HPC, GSCC and their replacement by the HCPC in order to

analyse the way in which social work, as a profession, has coped with and responded to the various forms of regulation to which it has been subject in England. First, we briefly detail the rise of external regulation of the professions, discuss the rationale for this and some of the criticisms that such a development attracted. Second, we take a closer look at developments within social work and of the operation of the GSCC's conduct proceedings from its inception until its dissolution in 2012. Third, we focus on the HCPC and consider how it has begun its regulation of social workers since it took on this responsibility from August 2012. We conclude by outlining some of the concerns we have as well as discussing reasons as to why we feel further exploration into this area needs to be carried out. Whilst this paper focuses on England, it is important to note that similar processes are occurring elsewhere in Europe; for example, see Barracco (2008) and De Bellis (2009) for developments in Italy.

The early history of professional regulation

The twentieth century witnessed a growth in occupations seeking to become professions. Yet, whilst occupations sought to be recognised for their expertise, authors such as Schön (2001) noted that at the same time there was a parallel increase in the questioning of professional rights and freedoms. There was also a call for them to be licensed to practise and a demand for a mandate to be implemented so that professions could be subjected to a form of social control. Schön noticed that, as a growing scepticism developed in relation to professionals' claims of having an extraordinary knowledge base, so did the attempts to regulate the professions increase, although this initially tended to emanate from the professions themselves by way of self-regulation.

One of the first attempts at setting up a self-regulatory body for social work with its own framework of ethics was in 1907 when the Institute of Hospital Almoners and the Association of Hospital Almoners devised a voluntary professional register, partly in an attempt to place social workers within a formal framework of ethics. In 1954, there was an unsuccessful attempt to set up a General Social Work Council (Guy, 1994). However, in 1961, the Association of Psychiatric Social Workers did set up a process of registration for its graduates (Malherbe, 1980). When the British Association of Social Workers was formed in 1970, albeit as a voluntary membership rather than regulatory body, there were calls to restrict membership to those with appropriate qualifications, yet, interestingly, this was seen as elitist by certain opposing radicals (Payne, 2002).

Calls for the setting-up of a Social Work Council that would regulate standards in professional training and practice continued during the 1970s and, in part, led to the government setting up the Barclay Committee which considered whether there was a need for an external body to regulate social workers.

It noted that the main argument by those in favour of such a Council, such as the British Association of Social Workers, was on the grounds that it would help protect the public but nevertheless the Committee concluded that the idea was premature:

> We are all agreed that the protection of the public remains the strongest argument in favour of an independent Council in any profession. It would be valid in social work if it could be shown that it was the most appropriate means available to achieve this end. The Working Party as a whole does not consider this to be so at the present time (Barclay Report, 1982, p. 186).

However, this (non) recommendation did not deter those in favour of a council from continuing to express their desire to have one introduced throughout the 1980s (Parker, 1990). Whilst there may have been no independent regulatory council for the profession as a whole, there was one which was concerned with the education and training of social workers. From 1971 to 2001, the Central Council for Education and Training in Social Work (CCETSW) was the statutory body that oversaw the education and training of social workers. Its role was to approve educational providers, award qualification certificates and, rather significantly, hold a register of all qualified social workers.

The establishment of CCETSW brought together disparate training bodies, oversaw the devolution of generic practice and led to the introduction of a two-year generic qualifying programme which enabled social workers to qualify with a Certificate of Qualification in Social Work (CQSW) award. Calls for there to be a General Social Work Council throughout the 1970s persisted (Malherbe, 1982), but it was after the election of a New Labour government in 1997 and the implementation of the 2000 Care Standards Act (CSA) that the GSCC was established.

In 2001, CCETSW was subsequently abolished and its functions were taken over by the GSCC. The key differences between CCETSW and the GSCC was that, with the latter, social workers had to formally *apply* to be registered; it was no longer an automatic process that one was registered once they had qualified. The GSCC was also given the responsibility to refer alleged cases of misconduct to a tribunal which then had the power to strike someone off the social care register if the complaint was upheld. With 'protection of title' coming into force on 1 April 2005, it also meant that only those on the GSCC's register could now call themselves, or legally work as, a social worker (McLaughlin, 2007). The inauguration of this new regulatory body marked a significant development in the history of social work.

The inauguration of professional regulation in social work

As mentioned earlier, the GSCC was a product of the New Labour government which came into power in 1997. In fact, its arrival into government

saw a marked increase in the regulation of *all* professions (Haney, 2012). Labour, whose role in former times had been to defend the ideals of the working class, in theory if not in practice, returned this time around with a different agenda: to continue promoting the ideology of the previous Conservative government by pursuing and augmenting 'neo-liberal policies in Britain' (Ferguson, 2008, p. 2). Although neo-liberalism was defined as a 'theory of political economic practices', it was recommended that, in order for it to be successful, all state-owned institutions, such as education, health care and social services, had to be turned into 'markets' or, in other words, organisations which traded (Harvey, 2005, p. 2). The rationale was that everyone could benefit from a market society (Pratt, 2005).

Another key theme of New Labour's ideology was to modernise social services. But it was felt that, for this to be achieved, social work needed to fall in line with the 'perceived requirements of a globalised economy' and should do so by incorporating particular strategies such as 'managerialism, regulation and consumerism' (Ferguson, 2008, p. 46). A key piece of legislation to emerge in terms of the regulation and provision of social work practice to training was the CSA. The CSA required the setting-up of a 'body corporate to be known as General Social Care Council' (section 54(1)) and it was the GSCC which was charged with implementing the requirements of this act.

This was part of the plans set out by New Labour in 1998 as part of its 'Modernising Social Services' agenda (Department of Health, 1998) which aimed to 'improve the protection of vulnerable people' (p. 9). Section 56 placed a duty on the GSCC to maintain a register of social workers, whilst section 62 required it to prepare and, from time to time, publish codes of practice which laid down the 'standards of conduct and practice' which were 'expected of social care workers'. As a result, in 2002, the GSCC published the national *Codes of Practice for Social Care Workers and Employers* and, on 1 April 2003, the social care register was introduced.

For the health professions, section 60 of the 1999 Health Act provided powers 'to make provision to modify the regulation of any profession so far as it appears to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which they provide'. In discussing this, Haney (2012) points out that, whilst ostensibly the government followed due democratic process in getting the act on to the statute book, the vagueness of the wording allowed it to take executive action at some future date by way of a secondary piece of legislation, in this case the 2001 Health Professions Order (HPO), which, subsequently, did not require general House of Commons scrutiny and discussion. As Haney highlights, 'in an attempt to pass record levels of legislation this Labour government introduced cut-off times for debates, and the use of increasing levels of secondary instruments which required no general debate' (Haney, 2012, pp. 6–7). So although previous governments had questioned the relevance of professional regulation, it is evident that New Labour was clear about what it felt was needed and manipulated procedures to ensure that its agenda to do so was not delayed.

In 2002, the HPC was established after it replaced the Council for Professions Supplementary to Medicine (CPSM) which was set up in 1960. Haney (2012) notes how there was considerable opposition to the imposition of an external, non-professional body to regulate the health professions. It is the 'external regulation' aspect which is a key point in this context. In the debates that took place concerning the setting-up of the HPC, politicians often spoke about how opposition mainly came from the *unregulated* sector as the majority of other professions (mentioned above) were regulated by their respective professional bodies. It was the notion of such self-regulation which was criticised as it was considered as allowing professional self-interest to override the public interest (Schön, 2001). Nevertheless, the HPO was passed and the HPC was established as an umbrella regulator for several health professions. This 'rather quiet coup', Haney argues, subsequently marked the change from that of statutory regulation (where power is passed to an organisation responsible for the practice) to a new form of regulation—one which was not affiliated with or experienced in any of the professions' specific areas practice (Haney, 2012, p. 7).

There were also worries that regulatory control over the practice of psychologists and therapists would lead to 'a nightmare of surveillance and perpetual insecurity' (Parker, 2009, p. 213). Parker was also concerned with the normative character of regulation. In setting 'official' moral standards by which practitioners were to be judged against, there was a danger that an uncritical conformity to prevailing social mores would ensue. Others raised objections to the 'tick box doxology' of the regulatory process of the health professions (Postle, 2012)—something that had previously been identified as a danger for social work as it moved towards competency-based training in the 1990s (Dominelli, 1996). The concern here is that 'knowledge' becomes treated as something packaged, approved and monitored by the relevant authorities—a process that severely restricts critical thinking or non-mainstream ways of viewing and treating individual and social problems (Parker, 2009).

Whilst Haney certainly raises a significant issue, she perhaps overstates the case when she argues that there was no knowledge of professional practice within the HPC and latterly the HCPC. It did, for example, create the *Standards of Proficiency* (SOPs) which set standards for practice for each of the sixteen professions that the HCPC regulates—an action which requires some knowledge of, and engagement with, the profession in question. Nonetheless, due to the numbers of professions it oversees, it can present as being more akin to that of an external lay regulator applying generic processes and standards across all the professions it regulates. In contrast, the GSCC was arguably able to develop a greater depth of professional knowledge and understanding with its more 'specialist' model of knowledge in practice as a result of having that connection with the one (social work) role.

Despite the rise in state regulation of the professions by bodies such as the HPC, GSCC and now the HCPC, there has been relatively little criticism of

such developments. Whilst inspection regimes such as Ofsted are held up to ridicule by many, such sentiment is rarely expressed towards the regulation of the health and care professions, and relatively few critical voices have been heard (some exceptions are McLaughlin, 2007; House and Totton, 1997; Parker and Revelli, 2008; Haney, 2012; Furness, 2013). For Haney, the abolition of the HCPC would allow a return to work-based regulation and offer an opportunity for the vast amount of money subsumed by such a monolithic body to be reinvested in more productive, intelligent work. The problem with regulation being in the hands of an external body, she argues, is that when it is:

> . . . split off and handed to people who are asked to know nothing of the practice, a lacuna is created. In such a case no reason, no body of knowledge, no evidence, no discrete idea or philosophy underpins the 'system' of regulation – these are the conditions in which political and economic power can grow unchecked (Haney, 2012, p. 9).

Although Haney does have a point, she does overlook some elements of professional involvement and engagement. For example, a wide range of organisations responded to the open consultation on the construction of the *Standards of Proficiency for Social Work*, including The College of Social Work, the British Association of Social Workers, the Association of Professors of Social Work and the Association of Directors of Adult Social Services (HCPC, 2011). Furthermore, the 'reviewers' who go out and actually inspect programmes which are being delivered are primarily from their 'home' profession.

When discussing the call from within government relating to the need for professional state regulation, Haney argues that 'today's professional class appears like the old unions, something to be controlled and contained' (Haney, 2012, p. 10). Yet, in order to fully understand Haney's argument, we need to consider her position in the debate. As a former psychoanalyst, Haney's call for such professionals to be left alone from statutory regulation is more understandable than a similar objection to the state regulation of social work. Social work is, after all, charged with carrying out statutory duties passed by the state. The decision to access health services is generally a voluntary one and, even if a medical professional advises us that we require medical intervention, we have the right to refuse such help (albeit with exceptions for those subject to the Mental Health Act or Mental Capacity Act).

However, there are times when engagement with social workers is not voluntary. Given that social workers have legal powers to intervene in people's lives whether it is wanted or not, many people will view their engagement with social workers as something that is imposed upon them against their own wishes. As such, perhaps it is not surprising that there have been few objections from within or outside social work over the powers given to the HCPC (and GSCC before it) to regulate the conduct of social workers. After all, if social work is a body of the state, then Haney's call for the abolition of the

HCPC and a return to 'work-based regulation' does not apply to social work; the state via these regulatory bodies is already, to a degree, regulating itself.

Regulating social work: from the GSCC to the HCPC

Regulation in social work, as with the health professions, can be perceived as a practical measure in order to protect the interests of the public. Indeed, protection of the public was the main rationale given by the proponents of increased external regulation. However, concerns have been raised that there is a danger, particularly in relation to social work, that individual social workers could be held accountable for failings that are ultimately rooted in more systemic or organisational problems such as high caseloads, inadequate resources and poor staff supervision—as well as being situated within a defensive blame culture (Leigh, 2013, 2014). This can lead to a narrow focus being placed upon the conduct of the social worker instead of the *role* and *responsibility* of the professional in question.

There is also the danger that risk-averse and media-wary employers may formalise concerns via the misconduct process instead of attempting to resolve them themselves. This was something noted by Furness (2013) in her analysis of GSCC conduct hearings held between April 2006 and July 2012, leading her to argue that it needs to be recognised by regulators, and we would add by employers also, that social workers do make mistakes but they can improve on their practice and often this can be achieved without resort to a formal investigation. In addition, McLaughlin (2010) noted that there was 'an inherent imbalance of power in the [hearings and appeal] proceedings, which heavily [favoured] the GSCC and [were] detrimental to the social worker's chance of receiving a fair hearing' (p. 311).

A parallel example is the use of a narrative of 'missed opportunities' when Serious Case Reviews are conducted. As Thompson (2013) points out, such a narrative misses the point—there are always missed opportunities; what matters is whether the worker did or did not fulfil their duties to a reasonable standard:

> The main reason for my concern is that the question of whether opportunities were missed is the wrong one to ask. It distorts and oversimplifies the situation and sets social workers (and others) up to fail .. . . However, it is the failure of professional duty that we should be focusing on, rather than the 'missed opportunities', as most missed opportunities will not amount to a failure of professional duty (Thompson, 2013).

Prior to its dissolution, the GSCC published several reports in order to provide an overview of what its investigatory processes involved. These explained why investigations were undertaken and how certain decisions were made so as to provide 'a legacy of learning' for future regulators of the profession (Furness, 2013, p. 2). One of these reports, *Regulating Social Workers 2001–2012*, provided details of the characteristics of registrants,

the sources and number of referrals along with a breakdown of the reasons relating to why sanctions were taken against appellants (GSCC, 2012). It emerged that, between the period of April 2004 and September 2011, the GSCC received 4,118 referrals in respect of qualified social workers of which came 34 per cent from employers. When referrals were made by the police or the employer, it was more likely that the finding of the hearing would be that the social worker had committed misconduct (GSCC, 2012). Of concern, and something worthy of further investigation, was that, of those social workers who had had a formal complaint made against them, there was a significant overrepresentation of men, black staff, those aged between forty and forty-nine, and those who identified as disabled (GSCC, 2012, p. 61).

In recent years, there has also been increased attention on the moral character of registrants, particularly in relation to how the moral character of the person could be assessed alongside their technical skills. For example, Banks (2010) has highlighted how a rule-based approach to practise can develop certain limitations for the practitioner in terms of the prescriptive element that it entails. In addition, Reamer (2006) has raised the issue of the conflict social workers face when having to decide whether ethical dilemmas or core professional values should take precedence in practice. This divide can lead to two different outcomes, depending on the decisions being made by the social worker and the organisation; in some cases, allegations of intentional, unethical practice were being made whereas, in other situations, certain decisions were seen as being unintentional but well thought out. Furness (2013) found that, when decisions were deemed, in terms of misconduct, as intentional or unintentional, the insight of the worker who had been involved in that situation was always needed in order to explain those actions or behaviours. This not only clarified why certain decisions were made, but it also enabled professionals to understand the issues surrounding malpractice.

Such concerns about the ability of the GSCC to understand the complexities of the social work role will, if anything, have been heightened with the transfer of regulatory authority to the HCPC. For, if the GSCC struggled to manage these complexities, how will a health-oriented body be capable of understanding the professional and ethical dilemmas that social workers can face? In an attempt to alleviate such problems, the HCPC stipulates that the fitness to practise panel considering each case will 'usually' comprise a registrant from the same profession as the person being investigated, in addition to a lay person who is not registered with the HCPC and a chairperson who leads the hearing and speaks for the panel (HCPC, no date).

Disciplinary processes

According to its 2012–2013 annual report, the HCPC (2013) received more complaints about social workers than any other profession within its remit;

there were 733 complaints concerning social workers compared with 262 relating to paramedics, who had the next highest number of complaints, significantly fewer than that of social workers. Yet, although there were more referrals made about social workers, it is important to note that there are more social workers (83,241 in total) registered with the HCPC than any other profession, with the next highest being physiotherapists (46,842), then occupational therapists (33,717), with all the others ranging from that of radiographers (27,820) to prosthetists/orthotists who have the fewest registrants (936). So, although numerically social work has the most registrants subject to concerns, as a percentage of all professions' registrants, social workers were the fourth most complained about profession, with 0.88 per cent being 'subject to concerns', behind hearing aid dispensers (1.38 per cent), paramedics (1.35 per cent) and practitioner psychologists (0.93 per cent), respectively (HCPC, 2013, p. 13).

However, it has to be borne in mind that the social work cases detailed are only those referred directly to the HCPC which did not take on this role until August 2012, so it is reasonable to surmise that the numbers and percentage of social workers subject to concerns will be higher in subsequent reports. Indeed, in addition to those social workers who have been referred directly to it, the HCPC also considered 217 cases initially investigated by the GSCC but which were subsequently transferred to the HCPC. Of these, 120 were considered by its Investigating Committee between 1 August 2012 and 31 March 2013. It found that there was a case to answer in 100 of these cases, which equates to a 'case to answer' ratio of 83 per cent (HCPC, 2013).

It is worth noting that it is not necessary for a complaint to be for an investigation to take place. Article 22(6) of the 2001 Health and Social Work Professions Order allows the HCPC to investigate in response to a media report or where someone provides information which it deems sufficient to warrant an investigation, even if the referrer does not want to raise the matter informally. The same article also encourages professionals to self-refer with Standard 4 of the HCPC's standards of conduct, performance and ethics stating that registrants must report to the HCPC 'any important information' about their 'conduct or competence' (HCPC, 2013, p. 11).

Initial concerns are then discussed by the Investigating Committee and, if it decides there is a case to answer, the HCPC is obliged to proceed with the case to a final hearing. At this stage, the complaint can still be deemed to be 'not well founded':

> Final hearings that are 'not well founded' involve cases where, at the hearing, the panel does not find the facts have been proved to the required standard or concludes that, even if those facts are provided they do not amount to the statutory ground (eg misconduct) or show that fitness to practise is impaired. In that event, the hearing concludes and no further action is taken (HCPC, 2013, p. 37).

It is also important to note that, if an allegation is substantiated, this does not necessarily mean that the practitioner will be deemed unfit to practise:

> In some cases, even though the facts may be judged to amount to the ground of the allegation (eg misconduct, lack of competence), a panel may determine that the ground does not amount to an impairment of current fitness to practise. For example, if an allegation was minor in nature or an isolated incident, and where reoccurrence is unlikely a panel may not find impairment. In 2012–13 this occurred in nine cases (17%) (HCPC, 2013, p. 38).

The focus of the HCPC proceedings is on the action and behaviour of the individual social worker. As Furness (2013) highlighted, this represents a key difference between such hearings and serious case inquiries. The latter certainly provide a narrative and moral judgement about the conduct of professionals but, crucially, they also consider organisational factors that may have impacted on practice. In contrast, HCPC hearings are predominantly focused on the actions and behaviour of the individual registrant.

This is a cause for concern. For instance, McGregor (2014) has highlighted a reoccurring theme in the HCPC hearings she has attended. She found that, despite it being acknowledged that social workers have to deal with the burden of holding high caseloads and receiving poor supervision, these problems were not taken into account by those on the HCPC panel, and practitioners were liable to be found accountable for having limited insight into their own failings. This highlights some strengths of the HCPC's predecessor in terms of how the GSCC proceeded in such cases. For example, in her analysis of GSCC hearings, Furness (2013) found that, when decisions were deemed, in terms of misconduct, as intentional or unintentional, the insight of the worker who had been involved in that situation was always needed in order to explain those actions or behaviours. This not only clarified why certain decisions were made, but it also enabled professionals to understand the issues surrounding malpractice.

Whilst it is recognised that the HCPC's responsibility for social work may still be in its infancy, there are already calls for consideration to be given as to whether it is indeed the most appropriate body to do so, with a government-commissioned report into social work education recommending that:

> The Department for Education should consider whether the role of HCPC in regulating the social work profession, including prescribing standards of proficiency and approving HEI (Higher Education Institutions) social work courses, duplicates the role of the College of Social Work, and, if so, whether those duties should be transferred to the College (Narey, 2014, p. 27).

Yet, The College of Social Work (TCSW) is itself a recent creation. It was established in 2012 following a recommendation from the Social Work Task Force in 2009 for the 'creation of an independent national college of social work, developed and led by social workers' (SWTF, 2009, p. 45). The College's website claims that this has happened and that the organisation is 'led by and accountable to its members' and exists 'to uphold the

agreed professional standards and promote the profession' (www.tcsw.org.uk/about-us/). Given the way in which social work is vilified by some from within government, the media and the public (Leigh, 2013, 2014), perhaps such a call by Narey for the profession to be overseen by its own organisation is an idea which is unlikely to garner widespread support. Furthermore, the parallel Croisdale-Appleby (2014) review of social work education did not agree with Narey on this point, arguing for the HCPC to retain a regulatory function over the profession. Clearly, this issue remains a contested one.

Conclusion

This paper has discussed the ways in which the social work profession has responded to, and coped with, the various forms of regulation to which it has been subject, in the process highlighting some of the influences which have been key to the development of regulation in the health and care professions.

Even though aspects of the way in which the HCPC operates have been broadly welcomed, they are not without criticism. There are those who have questioned the way in which the democratic process has been compromised (Haney, 2012) and those who have highlighted the inherent power imbalance in proceedings (McLaughlin, 2007, 2010). There are also those who have argued that there is a common failure to take into account wider structural, organisational or procedural factors, all of which can significantly impact on social workers' ability to fulfil their professional duties to the best of their abilities (Leigh, 2013, 2014; McGregor, 2014).

Whilst this review has recognised that handling organisational complaints is far from what can be called 'a straightforward process', it is still nevertheless concerning that there has been a rise in complaints being made to the HCPC from social work agencies in relation to systemic issues.

Although regulation was introduced by New Labour primarily to improve the protection of vulnerable people, it did not foresee that, as a result of regulating the workforce, social workers could one day be deemed as a group in need of protecting. Indeed, it has been brought to light that many of those social workers who are subject to the regulatory process from initial complaint to final outcome choose not to attend their fitness to practise hearing (McGregor, 2014). The reason for their absence is unknown. Yet, what is known is that a number of ethical, structural and organisational complications can occur (Leigh, 2013, 2014). These may not only obfuscate the decisions made by the regulator of our profession, but also prevent social workers from giving their perspectives of what is happening behind the scenes of their neo-liberal organisation.

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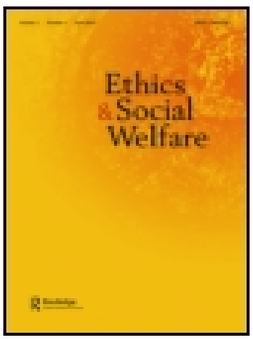

Ethics and Social Welfare

ISSN: 1749-6535 (Print) 1749-6543 (Online) Journal homepage: http://www.tandfonline.com/loi/resw20

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To cite this article: Jadwiga Leigh, Aidan Worsley & Kenneth McLaughlin (2017): An analysis of HCPC fitness to practise hearings: Fit to Practise or Fit for Purpose?, Ethics and Social Welfare, DOI: 10.1080/17496535.2017.1293119

To link to this article: http://dx.doi.org/10.1080/17496535.2017.1293119

ETHICS AND SOCIAL WELFARE, 2017
http://dx.doi.org/10.1080/17496535.2017.1293119

Routledge
Taylor & Francis Group

An analysis of HCPC fitness to practise hearings: Fit to Practise or Fit for Purpose?

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ABSTRACT

All professions regulated by the HCPC have 'protection of title'. This means that only those on its relevant register can legally work as or call themselves a social worker. As such, the HCPC's Fitness to Practise panel wields a lot of power over individuals brought before it, effectively being able to prevent them from gaining employment as a social worker or imposing conditions on their practice. This article reports the findings from a study which examined publically available notes of HCPC fitness to practise hearings. The aim was to analyse what happens when an initial investigation finds that there is a case to answer, what factors influence the findings of the Fitness to Practise panel and how the outcome of the hearing then affects the social worker subject to the HCPC process. Using thematic analysis, our findings suggest that the seriousness of the alleged misconduct does not necessarily relate to the severity of sanction applied. It is the social worker's engagement with the process, her insight into the issues and her credibility as a witness that appears to have the most significant bearing on the level of sanction applied.

KEYWORDS

Regulation; HCPC; Fitness to Practise; organisational issues; social work

Introduction

The number of countries where social workers are internationally subject to professional registration is on the rise. England is thus joined by a growing list of jurisdictions including Wales, Scotland, Republic of Ireland, Northern Ireland, Canada, the USA and New Zealand where social work registers are already in place (Kirwan and Melaugh 2015). Although there are some who believe that national regulation is essential for enhancing public confidence in social work services (Banks 2008; Healy 2015; Kline and Preston-Shoot 2012), others have expressed concerns as to whether practitioners are being subject to increased surveillance and censure (McLaughlin 2007, 2010; Furness 2013; Wiles 2011).

On 1 August 2012, the Health and Care Professions Council (HCPC) assumed responsibility for the regulation of social workers in England, taking over this role from the General Social Care Council (GSCC). Previously known as the Health Professions Council (HPC), the addition of social workers to its regulatory responsibilities led to a change of name from

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the HPC to the HCPC. Elsewhere, we have discussed the rise of professional and statutory regulation within both health and social work and also carried out interviews with social workers who have been subject to the HCPC process (see McLaughlin 2016; Worsley, McLaughlin, and Leigh, forthcoming). In this paper, however, we wish to explore the procedural aspects of the HCPC process once a concern is raised. In particular, we will focus on what happens when an initial investigation finds that there is a case to answer: what factors appear to influence the findings of the Fitness to Practise panel and how these then affect the social worker subject to the HCPC process.

All professions regulated by the HCPC have 'protection of title' which means that only those on its relevant register can legally work as or call themselves a social worker. As such, the HCPC's Fitness to Practise panel wields a considerable amount of power over individuals who are brought before it, effectively being able to prevent them from gaining employment as a social worker or imposing conditions on their practice. We acknowledge that there are potentially cases where social workers are so lacking in competence, or are found to have committed serious criminal acts, that they should be prevented from practice. However, it has been argued that some employers appear more inclined to formalise concerns via the misconduct process rather than attempting to resolve these matters themselves (Furness 2015). This raises an important issue, in that some of the referrals made may be related, at least in part, to wider organisational problems rather than the sole failings of a social worker. It is this concern that prompted this part of our research. We were particularly interested in exploring cases where, although it emerged that there may have been organisational inadequacies, it was an individual social worker who had been referred to the HCPC.

To gain a better understanding of some of these issues, we examined cases which were readily available to the public on the HCPC website. We selected cases where social workers had been brought before a Fitness to Practise hearing, and where a decision had been made as to whether the social worker in question had been either 'struck off' the HCPC register, issued with a 'caution', 'conditions of practice' or 'no further action'.

In this paper, we begin by briefly explaining the Fitness to Practise procedure before discussing our method and findings. We conclude by suggesting that it would seem that the seriousness of the alleged misconduct does not necessarily relate to the severity of sanction applied. It is the social worker's engagement with the process, her insight into the issues and her credibility as a witness, as judged by the panel members, that appear to have the most significant bearing on the level of sanction applied.

A case to answer: The Fitness to Practise procedure

The HCPC is the regulator for 16 professions and is concerned with whether or not individual professionals are 'fit to practise' by which it means they possess 'the skills, knowledge and character to practise their profession safely and effectively' (HCPC 2012b, 1). The inclusion of 'character' indicates that fitness to practise covers more than just professional competence; it also includes 'acts by a registrant which may affect public protection or confidence in the profession'. This may include matters 'not directly related to professional practice' (HCPC 2012b, 1). In effect, this extends the scope of the HCPC's remit into the private life of its registrants which has, since the introduction of the

social care register with the now disbanded GSCC, given rise to the 24/7 social worker: not always on watch but always being watched (McLaughlin 2007).

The HCPC (2015b) outlines the functions of what the HCPC can do to protect the public and these include: set standards for education and training, professional skills, conduct, performance, ethics and health of registrants; keep a register of professionals who meet those standards; approve professional programmes; and take action when professionals on the Register do not meet its standards. However, it clarifies what it cannot do also, and this includes considering cases about organisations and reversing decisions of other organisations or bodies.

It is worth noting the scale of the HCPC's endeavour in this area. According to its 2014/15 *Fitness to Practise* report, the number of registrants it is responsible for has nearly doubled in the last five years to just under 331,000 registrants, largely because of the inclusion of 88,397 social workers (26.72 per cent) of the final figure. In 2014/15, there were 2,170 cases in total referred to the HCPC for 'Fitness to Practise' concerns, of which 1,251 involved social workers, approximately 58 per cent of the total. Of the 1251, 295 were referred to the HCPC by an employer, 696 were referred by members of the public, 135 self-referral, 2 by a professional body, 5 by police, 28 by another registrant and 58 by 'other' (meaning not specified) and 32 anonymous referrals. Members of the public account for the highest number of referrals made. This distinct contrast may reflect the contentious nature of the social work role in comparison with the other professionals in navigating the public/private divide (Bissell 2012; Fox-Harding 2008). Although we cannot be sure that this is the case, McLaughlin (2007) has previously debated how social workers' efforts to improve the protection of vulnerable people has often led families to complain about the unwanted intervention as being similar to that of state intrusion or moral policing.

Of all the referrals made by the public to the HCPC regarding the professions it regulates, 70 per cent related to a social worker. The next highest is psychologists (10 per cent), physiotherapists (5.9 per cent) and then paramedics (4.3per cent). Overall, 1.42 per cent of registered social workers were the subject of some concerns, more than any other profession. The next highest was paramedics (1.09 per cent). Social work does, however, have most cases closed at the initial information-gathering stage ($n = 614$/ 59 per cent), therefore no further referral is made to the Investigation Committee.

Once an allegation is made and the investigatory process underway, in most cases, the individual will remain on the HCPC register, only being removed if the case goes to a hearing and the ruling of the tribunal is that s/he be 'struck off'. However, in certain circumstances, for example, if there is a suggestion that the person may pose a risk to themselves or other people, or for other public interest reasons, the HCPC can apply to the Practice Committee Panel for an 'interim order' (HCPC 2013b). An interim order, if granted, takes effect immediately and would prevent the social worker from practising, or place limits on their practice, until such a time as the case is heard and a final decision made (HCPC 2012a).

If the investigating panel decides that there is a case to answer, the HCPC instigates proceedings for the case to be heard at a formal hearing. Conduct and competence hearings will normally be open to the public and the press, although all or part of a hearing may be held in private in cases where confidential information may be disclosed, or to protect

service user anonymity and/or the private life of the registrant or witness. However, panel decisions and the reasons for them must always be given in public.

The panel considering the case will normally comprise of a registrant from the same profession as the person being investigated. In addition, there will be a layperson who is not registered with the HCPC and a chair (who may be a layperson or a HCPC registrant from any regulated profession, not necessarily the same one as the defendant). The Chair will lead the hearing and speak on behalf of the panel. Also in attendance will be an independent legal assessor/solicitor who will give advice on law and procedure to all those taking part in the hearing, and a transcript writer who will take notes of all that is said at the hearing.

If the panel finds that the case is well founded, there are a range of actions it can make. It can:

> caution you (place a warning against your name on the Register for between one to five years); set conditions of practice that you must meet (which might include, for example, insisting that you work under supervision or have more training); suspend you from practising (for no longer than one year); or strike your name from our Register (which means you cannot practise). (HCPC 2012a, 17)

In determining fitness to practise, the HCPC, as did the GSCC before it, uses the civil standard of proof when determining the outcome of its conduct hearings. The decision, therefore, rests on the balance of probabilities rather than the higher criminal proceedings standard of beyond reasonable doubt (HCPC 2012c). Once a decision is taken and sanction imposed, this is not necessarily the end of the process. The *Professional Standards Authority for Health and Social Care* reviews all final decisions made by the regulators' fitness to practise panels. It has the power to refer those decisions to court if it considers that they are unduly lenient and do not protect the public. The social worker has the option to appeal the decision and/or sanction to the High Court but this will come at considerable personal financial expense.

Given the power of the HCPC and the consequences for social workers who are subject to its investigatory procedures, analysis of the workings of the hearings and influences on the decisions made, in respect of the sanctions imposed, have obvious relevance for the social work profession. From 1 April 2014 to 31 March 2015, 155 social workers went before the above committees of which: 23 were struck off the HCPC register; 28 received a caution; 12 had conditions of practice; 4 had no further action; 33 were suspended; 9 cases were discontinued; 36 allegations were judged to be not well founded; 1 was removed from the register for an incorrect/fraudulent application; and 9 were removed by consent (HCPC 2015a).

Method

The HCPC website has details of all cases that led to a social worker being called before a Fitness to Practise hearing. We looked at all 'final hearings' heard by the HCPC from its inception as the regulatory body for social work from 1 August 2012 to 31 December 2014. These were cases in which a formal decision had been made as to whether to strike the social worker off the register, subject them to conditions of practice, a caution or no further action.

As mentioned previously, we focused on cases whereby a complaint had been made against the social worker that related to practice concerns. Our inclusion criteria included cases which related to issues such as: case management, professionalism and competence. We therefore excluded those cases where the reason for concern over the social worker's fitness to practise was related to issues such as drugs, alcohol, fraud or abuse. The reason for this focus was an attempt to explore the organisational and systemic issues that surround and underpin the HCPC referral made and the subsequent investigatory process.

Our search of the HCPC website revealed 93 cases (66 struck off; 22 cautions or conditions of practice; and 5 that resulted in a finding of no further action). We each looked briefly at the 'Notice of Allegations' made against the 93 social workers and made an individual decision as to whether or not we thought they met the criteria for further analysis. Together, we then met to compare our decisions and discuss any anomalies before making a final decision on which cases we would analyse further. This resulted in 34 of the 93 cases being included (21 struck off, 6 cautions, 3 conditions of practice and 4 no further actions). The reason why the fifth no further action was not included was due to no details of the case, apart from the registrant's name and hearing outcome, being available on the website for us to explore further.

Ethical approval was obtained initially from the University of X followed by agreement from the other institutions hosting the authors. Although the registrants' full names are provided on the HCPC website, for sensitivity reasons, we took the decision not to name social workers. We have used letters from the alphabet in order of the case discussed.

Data analysis

We split the 34 remaining cases between us by dividing them into three groups of 23 so that each of us looked at 14 'struck off', 6 'cautions' or 'conditions pf practise' and 3 no further action cases. This allowed us to overlap the cases and meant that two people analysed each case. Each case had its own set of notes which followed the same basic pattern: outline of allegation, summary of findings, decision on facts, grounds, impairment and sanction. The notes conclude with the 'order' which is the final outcome. In using thematic analysis on this raw data, we employed a broad understanding from Braun and Clarke (2006), developed in Hardwick and Worsley (2011). This familiar approach emphasises the coding and theming of the data through thorough reading and examination. This form of thematic analysis allowed us to draw on notions of grounded theory (Alston and Bowles 2013; Corbin and Strauss 2008) especially in relation to going back and forth on issues of codes and themes to best capture meaning. Themes were selected primarily based on recurrence, pattern and relationship (Carey 2012).

Methodological considerations

Our research at this stage constitutes an examination and secondary analysis of existing data which Hakim usefully describes as, 'any further analysis of an existing data set which presents interpretations, conclusions or knowledge additional to, or different from those presented in the first report' (Hakim 1982, 1). On a surface level, the use of

data from secondary sources presents minimal methodological challenges. However, it is worth noting some of the inherent issues underpinning the use of this data.

Kirk and Miller (1986) talk of 'synchronistic reliability', that is how varying observations are similar over time. This has been an element within the research project as a whole, which took place within an identified time period, and would therefore benefit from the element of triangulation. This will take place in the second phase of this study which involved in-depth semi-structured interviews with registrants who had been through the HCPC process and will be documented in the third article of this series.

Similarly, however, we were also presented with challenges around the issue of validity – how far our account represents accurately the phenomenon to which we refer (Hammersley 1990). We have been vigilant in qualifying inferences (Silverman 1999, 152) and have heeded Robson's (1998) warning in relation to problems that may accrue when using information collected for one purpose being used for a different one. In this regard, we tried to emphasise the extraction of understanding that *suggests questions* – or patterns – rather than provides direct answers. There is, therefore, an element of 'back to front' design in our methodological approach (Hakim 1987) where we have designed our approach based on what data we knew were available from the HCPC. By highlighting this explicitly in this context, we therefore wish to acknowledge the limits of the quality of our data but at the same time attempt to address this issue openly within this paper.

Findings

Before discussing the three themes that emerged, it is of interest to explore some of the key characteristics of the cases examined. The notes of the HCPC hearings, whilst broadly similar in layout, are not identical in basic detail, for example, they do not contain any demographic data beyond an inferred gender from the text. On that point, of the 21 registrants struck off, 10 were female and 11 male, a surprisingly marked difference to the broader social work population which tends to be around 80 per cent female (Davies and Jones 2015).

With regard to length of service, it was possible to estimate length of service in all but 3 of the 34 cases. It was interesting to note, however, that of those struck off in the 18 cases where a reasonable inference could be made, the length of service was an average of 15½ years. This dropped to just under 10 years for those given conditions or cautions – but rose to 13¾ years for the cases where no further action was taken.

> 'Attendance' and 'Representation' are two aspects of the hearing process that are highlighted in the notes and these refer to whether the registrant was there for the proceedings and/or represented by a solicitor or union representative. As we will discuss shortly this was quite significant because none of the 21 'struck off' registrants we looked at either attended or were represented. Therefore, being struck off appears to be an action that is done to social workers indirectly- they simply are not there. However, of those 9 given cautions or conditions, 7 attended the hearing 3 of whom also had representation. (by BASW or Unison) Where cases received 'no further action', all 4 registrants attended and one of those was also represented. The fact that 3 of the 'no further action' did not have representation indicates that being represented by a solicitor or a union is not essential in order to receive a favourable outcome. However, the importance of representation is confirmed by HCPC statistics in relation to all the professions it regulates. (HCPC 2015a, 36)

It is of interest to note that in relation to areas of professional practice, in the 34 cases we looked at, 63 per cent of the social workers referred to a Fitness to Practise hearing were from Children and Families teams (this proportion rises to 76 per cent of the cases eventually struck off). Mental Health was the next highest area (21 per cent), with Adults (10 per cent) and Youth Offending (6 per cent) both relatively less well represented.

Emerging themes

From the 34 cases that we analysed, three distinct themes emerged:

(1) The HCPC panel's opinion as to whether the registrant was a 'credible' or a 'non-credible' witness appeared to be a significant factor in its decision on sanction.
(2) The outcome of the hearing did not always appear to depend on the perceived seriousness of the registrant's misconduct or competence.
(3) Where organisational issues were identified and were believed to have contributed to the registrant's poor performance, these did not appear to have been explored by the HCPC.

In order to explain how these three themes developed, examples from cases which were issued with either: Struck off; Conditions of practice or Caution; and No further action will now be explored in more detail.

Decision on sanction: 'struck off'

It emerged that in the 21 cases where registrants were 'struck off', not one was present at their hearing. In 14 cases, the absence of the registrant was commented on by the HCPC panel as evidence that the registrant was not demonstrating full insight into their conduct and were thus implied to be 'non-credible' witnesses. Although in the notice of allegations it is often recorded that the Panel 'drew no inference from the absence of the registrant' but as the registrant was not present to provide their version of events, the Panel appeared to rely heavily on information that was present such as documentation supplied by the organisation or verbal testimonies from the organisation's witnesses. Not one of the 21 panels appeared to acknowledge that there may have been a worthy reason for the registrant's absence.

Recent research has identified that registrants are not always able to afford representation (see Worsley, McLaughlin, and Leigh, forthcoming) which may be the reason why social workers do not attend their hearing. However, while this may be the case, it may also be argued that other factors were involved, for example, perhaps the evidence against the social worker was compelling and on that basis, s/he chose not to attend a hearing which appeared to have a forgone conclusion. The reason we raise this point is to demonstrate that we cannot be completely sure without further information from all those who chose not to attend. It is also important to highlight at this stage that, in some cases, registrants may have provided written submissions to the HCPC explaining their absence, but this information was not accessible for public view on the website.

The notes from registrant 'A', for example, do provide an interesting insight into how the panel decided that their final decision was 'struck off'. 'A' was referred to the HCPC

by the organisation as she was alleged to have falsified records and not have made statutory visits. The panel concluded their investigation by deciding that the registrant had not demonstrated 'full insight' into her failures because in her written statement, although she had acknowledged that her fitness to practise was impaired at the time of these failures, she did not believe she was 'currently impaired'. As the registrant was not present and because no information from her written representation is produced in the notice, it is difficult to understand how the panel reached the conclusion that the registrant was in 'denial' as in their view she had downgraded 'the seriousness and urgency' of child protection issues. Indeed, in some of the cases examined, it could be argued that the perceived failures of the registrant may have emerged as a result of issues apparent within the organisation they worked for. Recent research has found that social workers have often been held accountable for failings that are ultimately rooted in more systemic or organisational problems such as high caseloads, inadequate resources and poor staff supervision (Leigh 2013, 2014).

In the notice of 'B', for example, although the panel notes that on a number of occasions the registrant was not provided with regular or 'proper supervision', this information does not appear to be considered when deciding on the registrant's capacity to practise. Instead, the Panel determined that registrant 'B' had 'displayed a lack of insight into the deficiencies' in spite of inadequate supervision or support from the local authority. The registrant was not present at the hearing and thus the Panel concluded that there was an 'obvious risk of repetition'.

In the case of 'C', referred to the HCPC after she was alleged to have not recorded or updated risk plans on the system and apparently misled colleagues into believing she had, the FTP Panel stated that:

> … the dishonesty aspects of the Registrant's conduct are not easily remediable. There is no evidence before the Panel to show that the Registrant has insight into her actions … .Her dishonesty means that the Registrant's integrity cannot be relied upon.

The decision that the registrant was dishonest appeared to initiate from the reports that were filed by the local authority to the HCPC and supported by the organisation's witnesses who gave evidence at the hearing. This form of labelling is often seen to emerge between people who have a natural tendency to identify with others similar to them and dis-identify with those who are somehow different or inferior to their group (Matthewman et al. 2009). In this context, the 'dishonesty' label was not contested by the in-group but was instead further developed and strengthened by the information provided from the referrer.

The Panel was not able to find out if the registrant's conduct was 'easily remediable' or indeed if her 'integrity could be relied upon' because she was not present. Whilst it was the Panel's opinion that the registrant had voluntarily absented herself because she had provided no information to indicate that she would attend, the real reason for her absence was not actually known. However, once again, there was evidence in the notes that 'C' was receiving ineffective and sporadic supervision. In several of the cases, we examined social workers cited 'poor supervision' as a contributing factor to their alleged impairment alongside illness or organisational bullying.

For example, in the case of 'D', it was accepted that the registrant had ill health and was 'off sick' intermittently. Whilst the Panel acknowledged that this period of absence

from work would not only impact on the registrant's ability to keep up with her work but also place her under increased pressure, they did not appear to explore what, if any, support mechanisms were implemented to help the registrant carry out her job effectively. The Panel appeared satisfied with the evidence given by the line manager that supervision should only have consisted of reminding the registrant of her duties and finding out if she was in need of training. As the registrant had 30 years of professional experience, this suggests a very basic understanding of professional social work supervision. As Beddoe (2010) argues, supervision plays a major role in safeguarding social workers because it can support practitioners in managing emotions and uncertainty. However, for it to be considered effective and supportive, it needs to be provided regularly and be sensitive to the practitioners' needs.

Although the registrants who did not attend were often referred to as 'non-credible', what is particularly striking is that, in many cases, where witnesses gave evidence against the registrant, they were often likely to be referred to as 'credible'. For example, in the hearing of 'E', one of the witnesses was described as 'credible, fair and balanced as a witness' yet in the notes there was no explanation of how this decision was reached. Although it is not the function of the minutes to provide this detail, it does appear to support our theory that presence is a significant factor. A little more information was provided in terms of how this decision was reached in the case of 'F'. The notes for this case described witnesses as 'credible' and 'candid', with no 'particular axe to grind'. They were also described as 'child centred' and 'very concerned', two social work characteristics that in any other situation would be considered difficult to assess without a formal observation of their practice (see Beddoe 2010).

Nonetheless, what is apparent from all of the 'struck off' cases is that without a registrant being present, the HCPC Panel has to rely on the evidence provided by the witnesses who do attend. It seems to be their *presence* that provides the 'credibility' that the Panel is looking for when trying to determine the seriousness of the allegations that have been made. The written representation supplied by a registrant, although considered by the Panel, do not appear to be an influential feature in decision-making. When concerns are raised by a registrant in their written representation about the conduct of the organisation the Panel seems to, in some cases, use this as evidence to demonstrate that the registrant has a lack of insight into their actions. For example, in case 'A', the Panel noted that the registrant 'does not accept the allegations', or 'blames everyone and everything without focusing on the allegations'. Without being present to challenge the allegations made, the registrant is not able to provide context to the points made in their written statement.

Decision on sanction: 'Conditions of practice' or 'Caution'

In contrast to the 'Struck off' cases, with the 'Conditions of practice' or 'Caution' cases, the majority of registrants did attend the hearing. However, in the cases where they did attend, registrants appeared to be seen as only being partially credible, being described as having only 'shown some insight' or a 'degree of insight' into the errors of their ways. For example, in the case of 'G', who was given 'conditions of practice', the Panel found the following:

> The Registrant admitted her failings in so far as record keeping was concerned. However, there was little evidence of appropriate reflection, or acceptance that her failure to undertake the required visits and meetings … gave rise to any risk of harm to the children she was responsible for.

From the cases we analysed, it appeared that the seriousness of the allegations made against registrants who received 'conditions of practice' or 'caution' were no less severe than for those registrants who had been struck off. In fact, in some cases, they appeared to be more serious. For example, with the case of 'H', the allegations spanned three pages and included poor communication, insufficient record and time keeping, not meeting service users and making inappropriate comments. However, because the registrant attended his hearing and was able to show 'some insight' into his 'failings' by expressing his 'genuine regret' for them, it was felt by the Panel that his fitness to practise was not currently impaired and he was thus given a caution.

It is of interest to note that there was one case, 'I', where the registrant did not attend but still only received a caution. The Panel was aware in advance that the registrant would not be present as she sent a letter stating in 'unequivocal terms that she did not intend to appear at the hearing'. Nevertheless, the hearing continued but it was instantly made clear that the allegations of misconduct related to one case only and in particular to 'deadlines being missed'. The Panel also appeared to have taken into consideration the fact that the registrant was 'off sick' for a period of three months and that when she did return she had a new line manager.

The letter from the registrant was used as evidence and the Panel found that she had only 'demonstrated limited acknowledgement of her failings' but they did accept that the Children and Family Court Advisory and Support Service (CAFCASS), the referring organisation, were experiencing 'organisational changes'. The outcome of 'Caution' was reached because in conjunction with her poor health, her resignation and the fact that she was adamant that she did 'not wish to return to work as a Social Worker … or maintain her registration with the HCPC', the Panel felt that her misconduct in relation to one case did not warrant a 'striking off order'. Prevailing organisational issues were, therefore, not only a frequent theme in the 'Struck Off' category but also within the 'Conditions of Practice/Caution' categories. We even noted that, in some cases, the Panel found registrants' competence issues 'understandable' because of problems emerging from the referring organisation.

In the case of 'J', nine allegations of misconduct were filed by the local authority against the registrant (who had been a team manager) which ranged from closing cases early, not responding to cases in a timely manner, allocating cases to a support worker instead of a social worker, fabricating case notes and other actions of dishonesty. Yet, once the Panel heard evidence from the registrant, they learned that the allegations emerged, in part, because of 'practices within the Council'. They subsequently accepted that 'the registrant's uncontroverted evidence' was due to 'staffing shortages in her locality'. Because the registrant appeared, in part, to take responsibility for addressing such organisational issues, she was deemed to have demonstrated partial insight into her failings. Yet, the problems that Panel agreed were present within that particular authority appear to have been discharged without proper investigation by the HCPC. Whilst we recognise that the HCPC openly claims that this kind of issue is not within its remit, what this finding suggests is

that these problems may still exist within that agency and thus may be affecting other social workers at that time.

Decision on sanction: 'No Further Action'

All the registrants who received an outcome of 'No Further Action' attended their hearing. The collective reason for why allegations against them were not proved appeared to be because they presented as 'credible' witnesses, or rather they were able to demonstrate full insight into the errors of their practice. Statements were made in the Panel's minutes to highlight this, for example, '[the registrant] admitted that the words she used [in her report] were inaccurate' and the registrant admitted 'I don't dispute that I did not see those patients'.

However, in addition to demonstrating full insight into the mistakes they had made, two registrants were also to provide evidence relating to the dishonesty of the complainant. In both cases, the complainant was an organisation. In order to present a balanced and considered argument of the HCPC Fitness to Practise process, we will discuss these cases in detail below.

In the case of 'K', the first hearing had to be adjourned because the registrant produced 'new' evidence in the form of her diaries. The notes stated that:

> The Panel considered whether to refuse to admit the proposed new evidence on the ground that its introduction was at such a late stage that it would be inappropriate to allow it to be adduced.

It is important to note that these diaries had not been seen by the Panel previously because the Council in question had not released them back to the registrant until just before the hearing. It emerged that the information within these documents provided crucial information and demonstrated that the Council had not been entirely honest on a number of occasions. The majority of the allegations made against the registrant were therefore found to be 'not proved' and no further action against the registrant was taken. Despite the content of the diaries demonstrating the registrant's innocence alongside the fact that the Council had not submitted this evidence, and thereby wasted the Panel's time and resources, it is not clear in the notes if the Council was referred onto another agency for further exploration of its conduct.

Another interesting contrast in this category relates to the 'credibility' of the witnesses from the referring organisation. In previous categories, when registrants' credibility is questioned, their fitness to practise is challenged. Yet, when a witness from the referring organisation is found to be 'not credible', their fitness to practise does not appear to be queried through the conduct of the meeting. This is especially apparent with the case of 'L'. In this case, the registrant's line manager made allegations that the registrant showed poor time management and did not see service users regularly. However, the registrant was able to disprove the allegation by demonstrating that he was facing 'an impossible task' because his manager was often away from the office, front line staff were missing through long-term illness, and there was 'very high staff turnover and redeployment'. The registrant revealed that 3 of the 12 remaining social workers were left to manage the 156 cases that were allocated to the team

and that he was often 'on duty for up to a fortnight at a time'. His way of managing the chaos was therefore to 'prioritise patients over paperwork' which he said he would do again in the same circumstances.

It is important to highlight that there is little national quantitative guidance on appropriate workload levels for social workers. The 'Standards for Employers of Social Workers in England' (LGA 2014) talk generically about 'safe and manageable' workloads that are allocated transparently, include an awareness of complexity and indeed, that employers publish data on average caseloads. Yet, in this case, while the Panel found that the witness was 'credible, cogent' and 'gave clear evidence' and empathised with his work conditions, the manager's misleading referral was not discussed. While we recognise that the HCPC are only there to adjudicate on the fitness of the registrant and they cannot start adjudicating on other people who come before them, it is still concerning that the conditions under which the registrant and others were working do not appear to have been explored further.

Discussion

Whilst we agree that social workers should demonstrate appropriate attitudes and adhere to professional standards in their practice (Banks 2004; Kline and Preston-Shoot 2012), our analysis of these cases has raised a number of important issues in terms of how this is measured by the HCPC within its regulatory framework. Firstly, it is concerning that when HCPC hearings take place, decisions are sometimes made without the registrant even being present. Although we recognise that the inquiry committee has to weigh up the cost and potential danger to the public when hearing cases (HCPC 2015c), it is still concerning that in 23 of our cases, life-changing decisions were made about the registrant without a clear reason being provided as to why the registrant had disengaged with the process.

Secondly, we found that if registrants were deemed to be credible witnesses, they needed to attend their hearing and present to the Panel as a person who admitted insight into the errors of their actions. In cases when this did happen, the registrants were then able to prove that their practice errors had emerged as a result of significant organisational failings. However, when registrants only demonstrated moderate repentance or slight insight into their failings, they were deemed to be partially credible. The outcome of the hearings appeared to depend on whether the HCPC panel considered the registrant to be a 'credible', 'partially credible' or a 'non-credible' witness.

Although the HCPC (2013a), in its *Fitness to Practise Report*, does provide examples of what is considered as impaired practice, it does not provide an explanation of how different panels, hearing different cases, can provide equitable decisions on the severity of the complaints made. What is suggested from our findings is that the outcome of the hearing was not dependent on the perceived seriousness of a registrant's misconduct or competence. This leads to our third concern: the issue that professional capability issues are treated differently. This finding suggests that the HCPC process is 'not a level playing field' (McLaughlin 2010, 314) because the panels' decisions appear to depend on the presentation of the registrant and the witnesses. This is evident from the examples that we have presented in this paper, which support Wiles' (2011) concerns that defining and measuring suitable conduct for social workers are problematic because, in this context,

we found that the 'seriousness' of the allegations often played an insignificant role in the Panel's considerations.

However, we do appreciate that the HCPC (2015c) itself identifies that a Fitness to Practise panel must weigh up the evidence before them by using a civil standard of proof and not a criminal one. Taking this into consideration helps to explain why a registrant who appears at a hearing, displaying insight and indicating how they will work more safely in the future may be given a lighter sanction compared to a registrant who does not engage. We acknowledge that it must be difficult for different panels to assess different cases in an equitable manner, irrespective of formal guidance. Yet, this process still presents some ethical concerns, as it appears to have a number of substantial limitations. And as Furness (2013) has pointed out previously, it needs to be recognised that social workers do make mistakes but displaying an insight into those errors so that the worker can improve on their practice does not need to take place through a formal investigation. This leads us to our final concern which relates to whether our regulator has actually replaced what should be an organisational procedure.

In many of the cases, registrants reported poor supervision, organisational issues and high caseloads. Indeed, little consideration seems to have been given by the Panel to the employers' 'duty of care' in such instances. With a process which focuses only on the practice of the social worker, it is difficult to understand how fairness in a hearing can be achieved, judgements made and equity established without properly taking into consideration the impact the organisational culture would have had on the practitioners' ability to practise.

Furness (2013) pointed out that because the HCPC only focuses on the actions and behaviour of the registrant, organisational failings are consistently overlooked. In addition, it has been questioned whether the introduction of registration and regulation has led to organisations adopting a top-down command with enforcement strategies to address issues that would have formerly been managed internally by employers (Worsley, McLaughlin, and Leigh, forthcoming). Rather than, therefore, the HCPC (2013a, 8) exploring the 'balance of probabilities' that would entail weighing up both individual and organisational issues, the regulator appears to be more focused on deciding if the individual is accountable without considering the wider context of the situation.

However, the HCPC has always been clear that its remit does not include consideration of cases about organisations, its concern being only with individual professionals (HCPC 2015a). Yet, whilst there is an understandable differentiation in terms of initial complaints and concerns against individuals and organisations, we find it puzzling that when issues of organisational concern are raised and accepted within hearings, that such concerns are not referred to a relevant body able to hold the organisation to account. This is something that is alluded to in the *Professional Standards Authority for Health and Social Care* which has called for 'a more nuanced, more sophisticated use of professional and system regulation' (PSA 2015, 13), one which could ensure that professionals are personally able to provide good care whilst being supported to do so within their workplace. This is important, as our research suggests that the HCPC not only expects social workers to encounter and operate effectively within dysfunctional organisations but that they are aware there are other social workers in that agency who are likely to be working in similar unacceptable conditions.

Conclusion

As an organisation, the HCPC holds a great deal of power over those professionals, in our case, social workers, required to register with it. In detailing the process whereby registrants can be brought before its Fitness to Practise panel, we have highlighted some areas that give concern as to how it operates and reaches its final decisions and subsequent sanctions. However, it has to be acknowledged that we have deliberately chosen practice cases and in this respect, we did not consider the cases where the HCPC plays a valuable role in protecting the public from criminal or abusive workers. We therefore wish to acknowledge that despite raising concerns about the Fitness to Practise process, the HCPC does have a role to play in safeguarding the public's interests. Nevertheless, the role of the HCPC in sanctioning those whose misdemeanours were, to a greater or lesser degree, affected by organisational failings and lack of resources runs the risk of individualising and scapegoating the social worker. Such a situation may also undermine public confidence in the profession and place service users at risk.

Disclosure statement

No potential conflict of interest was reported by the authors.

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British Journal of Social Work (2017) **0**, 1–17
doi: 10.1093/bjsw/bcx005

A Subject of Concern: The Experiences of Social Workers Referred to the Health and Care Professions Council

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Abstract

In order to practise social work in England, all social workers must register with the Health and Care Professions Council (HCPC). Only those who are registered can legally work as or call themselves a social worker. Once registered, if concerns about their practice are raised, social workers may find they are then made subject to a 'Fitness to Practise' (FTP) process. This article reports on the findings from interviews with social workers who were referred to the HCPC for practice issues. Our rationale was to hear and report on the lived experience of those going through the investigatory process. We carried out semi-structured interviews with eight social workers and used thematic analysis to analyse our data. The three main themes to emerge from our findings were *organisational issues*, *representation and cost* and *emotional toll*. This paper discusses these findings in detail. We suggest that the current regulatory system situates social workers in a position of disadvantage during the FTP process, and conclude by making a number of recommendations for consideration if future changes are to be made to the social work regulatory process.

Keywords: HCPC, fitness to practise, regulation, social workers' experiences

Accepted: December 2016

Introduction

In this paper, we analyse data from interviews with social workers who have been subject to referral to the Health and Care Professions Council (HCPC) due to concerns being raised over their fitness to practise. The HCPC is the body responsible for the registration and regulation of social workers in England. The grounds for a referral are not explicitly defined but must be related to concerns over a registrant's 'fitness to practise'. The referral can come from any individual person or organisation. Much has been written about the regulation of social work from the perspectives of various other interested parties such as policy makers, academics, journalists and, albeit it to a lesser extent, social workers themselves (e.g. McLaughlin *et al.*, 2016; Narey, 2014; Schraer, 2014). However, little consideration has been given to the effect a referral to the HCPC has on the individual social worker. It was this gap in the literature which prompted us to carry out the research on which this paper is based.

Our criteria for selecting social workers for interview focused on cases which related to either practice issues (such as work-load or competence), as opposed to more personal and/or criminal issues such as drugs, alcohol or fraud. This is because we wanted to explore whether there were any themes linked to organisational or structural concerns, both with regard to workplace issues in terms of reasons for the referral to the HCPC and also issues experienced within the HCPC process itself. In this respect, whilst we cannot testify to the complete accuracy of the respondents' claims or recollections, it is their narratives and experiences we wished to highlight.

The remit of the HCPC is to protect the public and, in order to do so, it keeps a register of health and care professionals who it deems meet its professional standards in terms of training, professional skills, behaviour and health. Only those on its register are legally entitled to call themselves by their professional title. For example, it is illegal for anyone not on the HCPC register to call themselves a social worker (HCPC, 2012*b*). A registered professional who has concerns raised over their ability to meet the HCPC standards can be called before a 'Fitness to Practise' (FTP) hearing, where the ultimate sanction could be that the individual's registration is removed. Such a sanction has severe implications for the social worker, as it means they can no longer work as, or even refer to themselves as, a social worker. In determining whether professionals are fit to practise, the HCPC uses the civil standard of proof when deciding the outcome of its FTP hearings. The decision therefore rests on the balance of probabilities rather than the higher criminal proceedings standard of beyond reasonable doubt (HCPC, 2012*a*).

Initial concerns relating to the conduct of the referred social worker are discussed by the HCPC's Investigating Committee. If that committee decides there is a case to answer, the HCPC is obliged to proceed with the case to a final hearing. At this stage, the complaint can still be deemed 'not well founded'. If the FTP panel decide at the final hearing that the concerns raised do impair a registrant's fitness to practise, a range of sanctions can be imposed. Article 29 of the Health and Social Work Professions Order (2001) states that those sanctions are: mediation, caution, conditions of practice, suspension and striking off (HCPC, 2011).

Protecting the public from social workers who are unfit to practise is undoubtedly a worthy endeavour. However, concerns have been raised that individual social workers could be held accountable for failings that are ultimately rooted in more systemic or organisational problems such as high caseloads, inadequate resources and poor staff supervision (Leigh, 2014). For example, the primary focus of the HCPC proceedings is on the action and behaviour of the individual social worker. This can be contrasted, for example, with serious case inquiries, which, whilst they provide a narrative and moral judgement about the conduct of professionals, also consider organisational factors that may have affected practice (Furness, 2015).

There is little national quantitative guidance on appropriate work-load levels for social workers. The 'Standards for Employers of Social Workers in England' (LGA, 2014) talk generically about 'safe and manageable' workloads that are allocated transparently, include an awareness of complexity and that employers publish data on average caseloads. The Standards are more specific with supervision and talk of monthly contact—with weekly sessions for Newly Qualified Social Workers (NQSWs) in the first few weeks of practice.

This raises an important issue in that some of the referrals made may be related, at least in part, to wider organisational problems rather than the sole failings of a social worker. This anomaly prompted our research, as we were concerned that individual social workers could be held accountable for the systemic problems already present in their employing organisations.

In the sections that follow, we explain the methods we undertook to gather data from our participants as well as the techniques used to analyse the interviews. We will then discuss and analyse those findings before concluding and making a number of recommendations in relation to the future of social work regulation.

Methodology

This project received initial ethical approval from the University of Central Lancashire. It was a three-part study which encompassed

different areas of focus relating to the HCPC's FTP process (McLaughlin *et al.*, 2016; Leigh *et al.*, forthcoming). The aim of this part of the project focused on gathering and analysing data collected from a series of semi-structured interviews conducted with eight qualified social workers, all of whom had been subject to the HCPC process for professional misconduct.

Participants were recruited through an online advert posted on the website of *Community Care*. Those who were interested in taking part were encouraged to contact one of the authors directly by e-mail. In total, twenty-eight people contacted us expressing an interest in taking part; however, only twelve responded to the e-mail subsequently sent with the participant information sheet which outlined our criteria. From these twelve, eight took part (two had been referred to the HCPC but had not yet been through the HCPC process and so did not meet our criteria, whilst the other two had not been referred to the HCPC process for organisational issues and so again did not meet our criteria). Participants were able to choose to be interviewed by telephone or face to face, with four opting for the former and four the latter. Whilst this difference is important in terms of interviewer/interviewee interaction, it is important to note that we only analysed transcripts, not observational data. Only one of us conducted any given interview, meaning that the other two relied exclusively on the interview transcript for their interpretation. For confidentiality reasons, all names have been changed in this paper. Interviews were recorded and then transcribed—the analysis and presentation of that data form the central body of this article.

Of the eight social workers we interviewed, three were found to have *no case to answer/no further action*, a further three received either a *caution/warning* or *conditions of practice* and two were *struck off* the HCPC register. By way of comparison, the HCPC 2015 Annual Fitness to Practice report shows that, of the 155 cases in which social workers were taken before a FTP hearing that year (1 April 2014 to 31 March 2015), approximately 25 per cent received a caution or conditions of practice, 32 per cent had no further action/no case to answer and 43 per cent were either struck off or suspended (HCPC, 2015).

The research drew heavily on a narrative approach, forming from 'an interest in biographical particulars as narrated by the ones who live them' (Chase, 2008, p. 58). Narratives are usually concerned with the temporal nature of the data (in this case the journey over time through the HCPC proceedings) and the symbolic meaning they offer (Bryman, 2004). Elliot (2005) notes other common themes of a narrative approach: a desire to empower participants, an interest in self and representation of self, and an awareness that the researcher is also a narrator. We are conscious of the limitations of the narrative approach in seeing a rounded picture; we do not present, for example, narratives of managers or HCPC panel members—but this was a deliberate choice for us. We

are employing narratives in this singular way to combat a reductive tendency for those social workers to be reduced to their professional 'offences'. In this way, we overtly seek to allow a space that affords a 'narrative of resistance' from the respondents (Mishler, 2005, p. 432).

Once the interviews were completed, the transcriptions were each analysed by the authors independently and subjected to a broad, thematic analysis from within a grounded theory approach (Corbin and Strauss, 2008; Braun and Clarke, 2006). Memos and codes were applied to the data. We then met together as a group and discussed the key themes that had emerged. The analytic files of coded data were then arranged into a conceptually clustered (thematic) matrix (Robson, 1998). A limitation of this process is that it is open to subjective bias. For this reason, we wish to explicitly note that we have selected the chosen quotes in two general ways: some have been used selectively to underpin an argument and others are more illustrative of a sentiment expressed more generally across what is a relatively small sample (Holliday, 2007). The initial draft of the paper was then sent out to our participants (using pseudonyms) for comment and to ensure we had conveyed their testimonies as accurately as possible. Only one requested changes. This was in regard to the costs of an appeal to the High Court, which we subsequently included.

In the next section, we examine and contextualise some extracts from the interviews we carried out.

Findings

The three main themes to emerge from the data were organisational issues; representation and cost; and emotional toll. We will discuss all three themes in detail before drawing our analysis together in the discussion section.

Organisational issues

Conflict with management

All of our participants had experienced conflict with management for various reasons. The first two extracts provide an example of how this conflict materialised for two of our participants. Ann, an assistant team manager in a local authority, left her job after disagreeing with her own manager over management techniques. From Ann's perspective, all had been going well until she was promoted and attended a management course at which she realised there were alternative ways in which a team

could be supported—ways which differed from the one her own manager implemented:

> I'm a lot more of a nurturing kind of person, she was a lot more authoritarian, you did this and you do it by, whereas I tend to sit with somebody and do it with them … and so there was a big divide developing between the two of us, I couldn't work in the same way as she did … I was so unhappy I gave my notice in
>
> (Ann).

It was not long after her departure that Ann received a notice that she was being disciplined for breaching certain codes of conduct. Despite having resigned from the authority of her own accord, Ann learned that she was being referred to the HCPC over a range of issues she was not informed were a problem at the time.

With Linda, problems began when a new manager joined a team that she had been working in for ten years. Linda informed us that part of her weekly hours included working on another project within the same local authority. This entailed visiting different groups within the community to explain what social care involved. Although Linda thoroughly enjoyed this aspect of her work, it also meant that she was not fully available for the work she was contracted to do with her team—something that she said appeared to annoy her new manager.

One day, Linda came into work and found that the manager had ripped everything that had belonged to the team off the walls:

> I said 'What have you done that for?' He said 'I'll speak to you in your next supervision'. I said 'That's a team issue, it's not for me in supervision' … and he came and stood over me … it was frightening … and he started shouting at me. I tried to leave but he blocked me at the door and he said … 'You leave here without finding someone to cover your shift and you know the consequences' … I got in my car and broke down … there was a black mark against me after that and that's when the trouble all started (Linda).

Following this incident, Linda was signed off sick with stress for three months. On her first day back at work, she learned that her manager had referred her to the HCPC for practice issues. What most distressed Linda was the way in which her return to work had been handled. She felt she was being further punished by her manager, as, rather than trying to repair their differences, he presented her with a range of complaints from other professionals that she had not been aware of previously.

Despite having significant social work experience and both having worked for their respective authorities for long periods of time, both Ann and Linda felt that little attempt to resolve the conflict internally was made. Instead, both participants were of the view that the HCPC

was used as a means to discipline those who dared disagree with their manager.

Practice issues

All of our participants talked about having high, complex caseloads but only Florence and Megan felt that their caseload affected their ability to practise effectively. For Florence, it was when she joined a community mental health team as an agency worker that her problems began. She described the work as 'manic'. Within two weeks, she had been allocated thirty-four 'complex and challenging' cases and she found that she was not only struggling to keep up, but was 'physically and mentally worn out'. One day, Florence returned from a visit and was called into the office by her supervisor and manager, and confronted for not keeping up to date with putting contacts on the computer:

> It just totally shocked me how they were with me. They, I did not get any eye contact from my supervisor … I showed them that I had all the contacts written down and explained that I just needed time to put them on the system … the manager was passive aggressive … he was leaning forward towards me and was shaking these papers really close to my face and it was just really intimidating … he was really hostile and angry … I came out just totally flabbergasted (Florence).

Florence started to become suspicious when another manager from a different team approached her and apologised for the way in which the meeting was handled:

> I was told 'Watch your back, if you step out of line in any way, or if you cross him, he, he will, you know, will make you suffer basically, he will report you and get rid of you' [starts to cry] … so, I'm sorry, I, I, I just get so emotional about it still (Florence).

In Megan's case, although she was actually in the role of a team manager, due to high turnover of staff and a high rate of referrals, she found she was carrying out the work of social worker and manager. One day, Megan was called into her manager's office:

> I was told that I wasn't allowed to work on the emergency out of hours service anymore … I was suspended straightaway and they just said it was something to do with a referral so I wasn't given any details of what I'd done … I wasn't allowed to contact anybody … so I couldn't get any information initially … I was just left to go on my own and nobody, nobody even took my badge off me (Megan).

This sudden suspension from a job that she had been in for fourteen years left Megan feeling completely 'devastated'. In addition, she was unclear of what it was she was supposed to have done. It was not until she received a letter from the HCPC that she learned she had been

suspended for gross misconduct. However, although the HCPC did provide information of what the process would entail, no details of what constituted the 'gross misconduct' were provided, which meant Ann was still no wiser about the nature of the referral. If an accurate account, this is certainly contrary to the Advisory, Conciliation and Arbitration Service (ACAS) guidance on disciplinary process (ACAS, 2015).

Cultural incongruence

The extracts that have been presented so far have all implicitly or explicitly highlighted that, irrespective of the initial concerns, our respondents felt that organisational cultural practices helped exacerbate the situation. The following extracts may shed light on how this form of incongruence can take place and how two participants actually used the HCPC process to help them tackle issues with their organisation.

Daniel informed us that he had been working as a registered manager of a children's home when his local authority received an 'inadequate' Ofsted inspection. It was shortly after this announcement that his troubles began:

> The new Director came in with a 'you do it my way or get out' attitude and rather than putting in development for staff, everyone just went straight down the disciplinary route … at one point we had 64 social workers on disciplinarys … it was definitely a cultural thing (Daniel).

A team of social care investigators was employed to undertake an investigation and part of the process was to interview individual social workers to find out whether they were aware of any 'bad practice'. Daniel found this approach threatening because of the way in which questions were posed: 'If you knew about something and hadn't disclosed it they'd say, you know, "We will come back for you and we will have you for collusion"' (Daniel).

This intimidating approach apparently frightened many practitioners into telling investigators anything that had the potential to be of concern. One of Daniel's team disclosed concerns about a child who may have been at risk of sexual exploitation. Rather than investigating the allegation properly, the information was turned immediately into a high-risk concern and Daniel was disciplined. Daniel, however, was sure he had not done anything wrong:

> The local authority process was flawed … so I had a quick look on the HCPC website at what I needed to do in the event of disciplinary investigation and … I thought 'Ooh actually I need to self-refer here' because the local authority should have done it but hadn't (Daniel).

Daniel was allocated a caseworker by the HCPC, who contacted the organisation for further details but the organisation did not respond.

Daniel sent through all the relevant information as requested and learned, a year later, that there would be 'no further action'. During that time, Daniel found out that he had been exonerated by his agency but, when he tried to return to his original post, he could not because the post had already been filled. He received a substantial financial compensatory payout as a result.

Liam was a reviewing officer for a local authority. For him, it was a difference in ideological perspectives that led to conflict between him and his organisation. This resulted in a deterioration in communication between the two parties, which led to a breakdown in trust, especially when the organisation raised issues about the way in which Liam practised:

> ... an integral part of my practice was ... I would rather not do anything than do something for the sake of being seen to do something, and the consequence of that was I would sort of hold the risk longer than other people ... this terrified the hell out of senior managers, erm, and consequently when it all kicked off I just knew that I was toast (Liam).

Like Daniel, Liam also knew that he would be unable to tackle the issues he had with his organisation alone and so he was pleased to be given the opportunity to go through the HCPC process. He felt the hearing would help him redress and challenge the organisation's concerns about his practice.

Representation and cost

Previous research into professional regulatory hearings have noted the benefits of legal representation in achieving a favourable outcome/less severe sanction for registrants facing misconduct/FTP concerns (McLaughlin, 2010; HCPC, 2015). However, this can be a costly endeavour, with three of our participants spending between £5,000 and £15,000 on legal fees.

What we learned from our interviews is that it is not only legal fees that mitigate against the social worker having a 'fair' hearing. Participants informed us that the HCPC pays for the expenses of all its witnesses, including travel and accommodation. Yet those who agree to be a witness or character reference for the registrant must fund themselves. In addition, most hearings are in London, which can make travel costs more expensive for those farther away. We learned that it is not uncommon for proceedings to overrun, with witnesses being told they need to return the following day. Such circumstances can incur substantial additional costs in terms of lost wages, hotel, transport and meal

costs, as well as personal difficulties in terms of familial and/or other responsibilities.

The legal costs, combined with the drawn-out process of the FTP procedure, can induce feelings of being beaten down over a lengthy period and we were informed that some of our participants did not engage or, more precisely, stopped engaging with the HCPC simply because they could no longer afford to. For Amal, a previous referral to the General Social Care Council (GSCC) took three years to complete and concluded with a twelve-month admonishment. Later in her career, when another referral was made to the HCPC, it took two years to complete. It concluded with her being struck off the social work register—an outcome she believed occurred because she did not attend her hearing. Amal had had legal representation initially but, because she was out of work, she 'couldn't afford to keep paying the fees' so she dropped the legal representation. Because she felt she would not win without it, she eventually stopped going to the hearings:

> It was just, because I was already stressed about it I just kind of blocked it out kind of thing. It was just easier to do that and then the cost, I just couldn't, so yeah, so when I could have challenged some of those things and me being, would it have even made much difference (Amal).

Although Amal stopped attending because of financial implications, Alisdair, on the other hand, did not attend one of his hearings because his British Association of Social Workers (BASW) representative could not attend: 'I had no-one to tell me what to do … and I was quite worried I'd make it worse' (Alisdair).

Although most participants felt they needed representation, not all of them had a good experience when they were represented by either a legal or a professional body. For example, Linda felt that some of the advice she received from Unison and her legal representative may have hindered her case, as she was advised not to call any witnesses for her hearing. Florence, who was represented by BASW, felt that the representative that she had during the day was very good but felt that she received poor advice and support in the lead-up to the hearing.

Nevertheless, most participants felt that representation was important, especially during the hearing, and a few wanted to emphasise this in our interviews:

> I realised that I didn't have a hope in hell to get through this on my own and that I would need legal because they were ripping me apart … the HCPC barrister said that what I did was worse than a burglar or the people that covered up the Hillsborough tragedy (Ann).
>
> … if you haven't got someone to argue legally for you, you haven't got a chance, and you think it shouldn't be down to money, you know, a system should be, have inbuilt support for both sides really (Alisdair).

Some felt that legal expertise also prevented registrants from becoming too emotionally involved, thus compromising the hearing. For example, Liam said:

> I would have been too, still too angry, and if I'd had to deal with it myself … and so it was really important that I got someone to deal, to stand between me and them [the organisation] because otherwise I would have been unfocussed (Liam).

FTP panel's knowledge of social work

Three of our participants questioned the FTP panel's knowledge of social work. For example, when Alisdair tried to demonstrate that he had kept up with his practice knowledge by attending a 'Community Care Live' event, a well-known and established social work conference, 'no-one [on the FTP panel] seemed to know what the Community Care Live event was'.

Similarly, Ann, who implied that the social work member of the panel was long past retirement age, felt:

> … the panel did not appear to understand what social workers did, they didn't even understand what a contact centre was … you feel you're being judged by people that really have no clue of what we're dealing with day to day (Ann).

Mea culpa

Most of our participants were of the view that HCPC panels preferred registrants to acknowledge fault for the 'mistakes' that had been made: 'What they want is for you to go there and say "I'm sorry. I won't do it again"' (Ann).

Some participants were of the view that, if they argued against the points raised in the referral, such as by claiming that work-load pressures led to the errors that were made, they were accused of being 'in denial'. This argument reflects a point raised recently in a *Community Care* article which reported on the findings of one HCPC case. It was noted that work-load pressures were the registrant's responsibility and, even though the HCPC panel acknowledged 'systemic failings' were present in the local authority, the registrant's suspension was only lifted once she accepted she was still at fault (Stevenson, 2016*b*).

Referral as policy

According to some of our participants, it appeared to be local authority policy to refer all concerns resulting in internal disciplinary procedures to the HCPC. According to Ann, in her local authority, 'it is their policy for anybody who's been dismissed, no matter for what, they refer to the HCPC'.

Megan suggested that this policy of referring everything was due to the local authority 'lacking confidence in their own abilities':

> I don't think they understand how to manage people hence why it was a very oppressive way of managing and, and I just think they just said 'Oh well, send it over to the HCPC, they'll deal with it' (Megan).

Also highlighted was a lack of information/communication during the period from either being suspended from work and/or referral to the HCPC. Whilst aware of the likely reason behind the referral in general terms, there was often a gap before the more detailed allegations were made available to the registrant. Megan expressed her frustration at the lack of information coming from the HCPC. Whilst she recognised that the HCPC was waiting for information from her organisation, what she could not understand is why they made no attempt to chase the local authority to provide this: 'I said "Can't you, you know, like chase this up? This is my professional livelihood, it's my life" and at that point I was, I mean I'd, I'd actually attempted suicide' (Megan).

Daniel had a similar experience in which it was the local authority rather than the HCPC responsible for delaying the process: '... when I got the pack that the HCPC sent, there were at least six communications with the local authority that had remained unanswered, they hadn't sent the stuff that HCPC needed to complete the investigation' (Daniel).

Emotional toll

What was apparent from all of the interviews was that the HCPC process invoked considerable emotional stress for all participants involved. The following extracts provide some context of the sudden shift in reality that participants experience once they learn they have been referred to the HCPC: 'It was [laughs], I was like, I couldn't believe it, it was like waking up to a nightmare' (Amal).

The high emotional cost of the process also had a physical effect on some of our participants:

> I was done, I was broken, I was absolutely broken (Florence).
>
> ... it's had an impact, especially with my lupus it's, because stress triggers and yeah, quite ill, quite, it's had a really big impact

> emotionally, mentally, health wise and obviously financially as well (Amal).

These negative effects on our participants' health were exacerbated by the length of time the proceedings took, with some of our respondents engaged in processes lasting over two years. The cumulative effect the stress of the process creates clearly has a major impact—a factor that all participants felt required considerable fortitude: 'Anybody, anybody weaker would have thrown themselves under a train' (Florence).

Furthermore, of the eight respondents interviewed, five informed us that they had either attempted suicide or had suicidal thoughts:

> I knew it would be a public hearing and I had got it into my head that all my colleagues would be there and I didn't want, I got frightened, don't know why, that was paranoia because all that time I was so stressed, this is the bit that gets hard [starts to cry], I was suicidal, I was suicidal (Florence).

> I became depressed very, very quickly and … I just didn't know what to do. I was, I was just bereft really …. This is my, this is my professional livelihood, it's my life and at that point I was, I mean I'd, I'd actually attempted suicide (Megan).

Although they did survive this process, few emerged unscathed. One especially wanted to leave the profession far behind: 'I never wanted to be a social worker ever again, ever, ever' (Florence).

Although some did return to social work, few forgot the experience they had been through. The fear of making another 'mistake' was a common theme and led to defensive techniques being implemented or to participants changing role completely:

> I probably never will get over it because I'm always terrified if I step out of line or do something wrong that is, that my manager, is going to report me to the HCPC again because I know I could never go through that again (Florence).

> I can't do frontline work now … and in part that's why I asked to do that [professional development] role because I need to step away from frontline … I'm still terrified of making a mistake (Megan).

Discussion

From the interview data, it is evident that all our participants became involved in the HCPC process because they had experienced some form of conflict with management from within their organisation. Although all of our participants have said they attempted to resolve the issues that they encountered internally, it would seem that communication broke down between both parties and, as a result, the participants were either referred to, or made a self-referral to, the HCPC. This was something

noted previously by Furness (2015), who has argued that some employers appear to be more inclined to formalise concerns via the misconduct process rather than attempting to resolve them themselves.

However, what is also of interest is how two participants welcomed the involvement of the HCPC and sought to use the hearing as a form of recourse to address and expose the organisational and management problems they encountered. Both of these participants wanted the opportunity to demonstrate to the regulator that the issues lay with the organisation and not their own practice. Nonetheless, to prove this was the case, they incurred significant financial cost. This suggests that there is a clear imbalance here in terms of financial loss, with the HCPC being able to afford legal costs, ironically from the fees of its registrants, whereas some of our participants could not. Without legal representation, some participants disengaged with the process, which culminated with them being struck off. However, while all participants were fully aware of the financial costs they would face, they were not prepared for the impact of the emotional turmoil they would also encounter.

Six of our participants felt their problems escalated once the referral to the HCPC was made. This is in part because they feared losing their professional identity, credibility and career for which they had worked hard. Some of these feelings can perhaps be understood from a professional identity perspective where, through the process of professionalisation, social workers significantly identify with the role of being a 'social worker'; therefore, when this role is denied them, they experience a sense of loss and grief (Leigh, 2013). In addition, in many cases, social workers also experienced a sense of being left in the dark, not sure, in some cases, of why a referral had even been made. This period of not knowing what the future held, coupled with isolation and a lack of support from the HCPC and their own organisation, led many of our participants to contemplate or attempt suicide. From the respondents' narratives, little consideration seems to have been given to the employers' 'duty of care' in such instances.

Several of the respondents talked of the actions of their employers in referring them on to the HCPC apparently in lieu of following internal disciplinary procedures. It is interesting to reflect on the key principles that ACAS propose in their disciplinary and grievance code of practice—guidance that can be taken into account by Employment Tribunals when determining whether employers have acted fairly. The guidance talks primarily of the need for fairness, timeliness (avoiding 'unreasonable delay') and affording opportunities for employees to be informed of the case and give them an opportunity have their say (ACAS, 2015). A significant difference between Employment Tribunals and the HCPC process is the ability of the former to award costs against the employers as well as the employee.

A common theme to emerge from all the interviews was the time it took for the HCPC to gather its evidence. This meant that those participants who were without work faced financial difficulties—a situation exacerbated for those without a working partner to support them during this time. Yet we have learned that, even when the hearing is over and a decision reached, this does not necessarily mean that the ordeal is over for the referred social worker. Many talked of experiencing ongoing and debilitating stress that either left them feeling paranoid that this would happen again or meant they felt unable to return to social work. With the profession struggling to maintain morale and retain experienced practitioners (McFadden *et al.*, 2015), this is a concern.

Conclusion

Our research suggests that we currently have a regulatory system in place that positions social workers at a disadvantage and which raises several ethical and moral issues in relation to power, representation, fairness and finance. While we appreciate that this study only involved a small group of social workers, our data have still nonetheless raised questions about the regulatory process to which social workers are subject.

First, it is evident that those who are removed suddenly from their post and then have to wait a long time for the HCPC process to conclude experience significant emotional distress about what the future may hold. Whilst we accept that the HCPC is in a difficult position in cases such as these, we also recognise that it is still a powerful regulatory body. As a result, the HCPC is in a position to exert more pressure on referring organisations to provide the required information for proceedings to be expedited in a more timely manner.

Second, it has become apparent that, whilst registrants are waiting to go through the process, they experience feelings of distress, marginalisation and isolation. If registrants were able to access more support, not only from the HCPC and their own organisation, but also from having the opportunity to contact other registrants who are in a similar position, it would help them significantly. An advice/support group could be created by linking social workers to an online network which registrants could join on a voluntarily basis.

Third, it is evident that the financial losses registrants face as a result of employing legal representation have substantial implications. These not only affect their livelihoods, but also led some to disengage with the HCPC process altogether. Nevertheless, many of our participants still felt it was needed not only in terms of legal expertise, but also for emotional or general supportive reasons. In addition, appeals against the FTP panel's decision have to be made to the High Court in England

within twenty-eight days of the date of the original notice—a 'formal' right that, given the expenses involved, in effect leaves many social workers with little recourse against what they believe to be an unfavourable FTP outcome.

To practise as a social worker, social workers must pay to be registered with the HCPC, with their registration fees used by the HCPC to pursue cases against them. If these fees were also made available for social workers to contract appropriate legal representation, a more level playing field could be established financially.

Recently, there have been reports that the HCPC may lose its role as the regulator of social workers with an announcement that a new social work specific body is to replace it (Stevenson, 2016*a*). Although it is too early to tell if or when this will happen, we strongly recommend that the findings from this paper, and previous papers into the HCPC process, are given careful consideration in informing the structure and direction of any new regulatory system.

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Legal Studies (2019), **39**, 339–357
doi:10.1017/lst.2018.42

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RESEARCH ARTICLE

The procedural fairness limitations of fitness to practise hearings: a case study into social work

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(Accepted 28 August 2018)

Abstract

The norm in fitness to practise proceedings (FTPP) is that where sanctions might be imposed procedural fairness requires a court-like hearing. This paper questions that paradigm, using empirical research to focus on the FTPP to which social workers must account. Procedural fairness is a multi-faceted legitimising concept used to justify the design of decision-making processes. With FTPPs, the major justification is an 'instrumentally' focused model of procedural fairness which prioritises making decisions that look right, a goal which is delivered in the context of social work. But other justifications for procedural fairness are inadequately fulfilled, with in particular a 'dignitarian' respect not achieved due to the high levels of non-attendance by registrant social workers. Further, procedural fairness as 'public accountability' is undermined due to the relative lack of engagement of FTPPs with the perspective of the social work community. These findings hint that in the context of a poorly organised and resource-poor profession other hybrid forms of FTPP might have a stronger claim to procedural fairness than the court-like model.

Keywords: procedural fairness; professions; alternative dispute resolution; social workers

Introduction

In January 2018, the Conduct and Competence Committee (CCC) of the Health and Care Profession Council (HCPC) ruled that a social work manager had to be sanctioned after his decisions, coupled with a failure to record and carry out supervision sessions, left children at risk. The manager was made subject to a 12-month conditions of practise order, despite the CCC conceding that he had worked with 'a heavy caseload, poor working conditions, inadequate management support of him in his role as a manager, and significant personal health issues'.[1] The Committee heard that, at one stage, the manager had been responsible for 120 cases even though 65 cases was the optimum caseload. Two social workers from his team who gave evidence at the hearing said the manager had done all he could to ease the burden for the team. However, he was referred to the HCPC because as the manager he was responsible for ensuring cases progressed within his team.

Cases such as this are a common feature of professional regulation and raise delicate questions as to the extent to which it is reasonable to sanction individual professionals where system failings are a

[†]The authors express their gratitude to the feedback they received from colleagues, in particular Joe Tomlinson and that provided by the referees.

[1]L Stevenson 'Social worker sanctioned for supervision failures despite "heavy caseload, poor working conditions"' Community Care (3 January 2018), available at http://www.communitycare.co.uk/2018/01/03/social-worker-sanctioned-supervision-failures-despite-heavy-caseload-poor-working-conditions/ (accessed 8 February 2019).

contributory factor.[2] Such cases also challenge us to reflect upon the procedural fairness of the processes by which professionals are disciplined. As fitness to practise proceedings (FTPP) have power to bar professionals from practising, it is commonly assumed that a court-like forum is required to provide the requisite procedural fairness to oversee the process. This paper questions whether that dominant paradigm is appropriate in all circumstances, with a particular focus on one profession, social work. It is supported by the results of two empirical studies into the work of the HCPC[3] and a content analysis of the judicial appeals process that oversees its work.

Procedural fairness is a legitimising concept used to justify the design of decision-making processes, but the concept wraps together multiple underlying objectives. In this paper, three discrete procedural fairness justifications – instrumental, dignitarian and public accountability – are used as a framework through which to scrutinise the FTPP as operated for social workers. These justifications are overlapping and competing, and the degree of emphasis to give to each is the responsibility of policy-makers, but solutions should be reassessed through reflection on experience.

This paper argues that the design of the social work FTPP is *instrumental* in focus, providing a redemption model of decision-making which tests a registrant's capacity to demonstrate contrition for investigated malpractice following an independent hearing.[4] The FTPP design, however, pays considerably less attention to achieving either *dignitarian* respect for professionals or *public accountability*. For well-resourced professions, FTPPs create the space for these thicker justifications for procedural fairness to be realised, but in the context of the under-resourced social work profession the space is not filled. Instead, in practice the social work FTPP achieves low levels of participation by investigated registrants and a shortage of engagement with the perspective of the social work profession.

Even if the social work FTPP delivers upon its primary goal of protecting the public, therefore, its current design risks delivering a cosmetic justice system and thereby undermining wider regulatory goals, such as building trust amongst the social work community and learning from instances of malpractice. In response to this problem, the procedural fairness merits of one alternative model are considered. Through this alternative a more balanced disciplinary process could be designed, better equipped to offer practitioners the opportunity to receive due process and facilitate a stronger focus on institutional learning. The proposed approach depends upon an enhanced willingness to integrate the added potential of inquisitorial dispute resolution processes. The Government have partially moved towards this model in a recent consultation paper,[5] but the focus remains weighted against the registrant.

In this paper, the challenge of designing FTPPs is introduced in Part 1. In Part 2 the concept of procedural fairness, and the variable goals that are pursued within it, are developed. In Part 3 current operational practice is scrutinised before, in Part 4, the argument for an alternative approach is laid out.

1. The design of fitness to practise proceedings

(a) Fitness to practise proceedings, the HCPC and social workers

The primary purpose of the regulation of professions is to provide public protection against practitioners that are unfit to practise,[6] a duty which is often stated in legislation.[7] It is also a duty that

[2]Eg see *Dr Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879; D Cohen 'Back to blame: the Bawa-Garba case and the patient safety agenda' (2017) BMJ 359.

[3]See K McLaughlin, J Leigh and A Worsley 'The state of regulation in England: from the General Social Care Council to the Health and Care Professions Council' (2016) 46(4) British Journal of Social Work 825; J Leigh, A Worsley and K McLaughlin 'An analysis of HCPC fitness to practise hearings: fit to practise or fit for purpose?' (2017) 11(4) Ethics and Social Welfare 382; A Worsley, K McLaughlin and J Leigh 'A subject of concern: the experiences of social workers referred to the Health and Care Professions Council' (2017) 47 British Journal of Social Work 2421.

[4]P Case 'The good, the bad and the dishonest doctor: the General Medical Council and the redemption model' of fitness to practise' (2011) 31 LS 591.

[5]Department of Education and Department of Health and Social Care *Social Work England: Consultation on secondary legislative framework* (London: TSO, 2018).

[6]Department for Health *Promoting Professionalism, Reforming Regulation: A paper for consultation* (London: TSO, 2017) p 9.

[7]Eg Medical Act 1983, s 1(1A).

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

has been confirmed in court,[8] and is necessary both to protect members of the public and to provide users with confidence as to the competence and integrity of professionals. This duty has profound implications for professionals. As Sir Thomas Bingham MR once ruled: '[t]he reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price'.[9]

Public protection is achieved in part by safeguarding access into the professions but also through establishing FTPPs, which are designed to deal with allegations as to the fitness to practise of practitioners. In designing FTPPs, three broad design choices are on offer. One choice is to adopt a purely 'court-like' process, where the emphasis is on formality and adjudication. Another option is to secure settlements through various forms of alternative dispute resolution short of adjudication. In between these alternatives, 'hybrid' or 'mixed'[10] designs can be deployed to marry the benefits of 'court-like' and 'informal' models.

The history of professional regulation reveals a presumptive assumption in favour of a 'court-like' model of decision-making for FTPPs. For social workers, the relevant FTPP is operated by the HCPC, a lay regulator.[11] Referrals of fitness to practise matters can be made by a range of sources, including members of the public, employers, the police, other registrants and self-referrals. As with many court-like processes, there are some informal features of the model, such as early filtering opportunities through which decisions can be made about 'weak' allegations. In the HCPC model, there is also a capacity to pursue a mediated settlement,[12] although it has not been the policy of the HCPC to use this option.[13] Instead, once a preliminary screening process has been completed, a formal investigative process is commenced.

Following an investigation, the initial findings are reported to a separate Investigation Committee which decides how to proceed.[14] If the Investigation Committee decides that there is a case to answer, the HCPC instigate proceedings for the case to be heard at a formal hearing of the CCC, comprised of a registrant from the same profession as the person being investigated, a lay person who is not registered with the HCPC and a chair (who may be a lay person or a HCPC registrant from any regulated profession).[15] Subject to confidentiality requirements, hearings are open to the public and the press, with the CCC's decisions and the reasons for them provided in public.

The focus in CCC hearings is on establishing whether an individual registrant's 'fitness to practise is impaired' by reason of one of a selection of pre-defined grounds.[16] The standard of proof is a balance of probabilities test,[17] not as formerly one of beyond reasonable doubt.[18] If the panel finds the case is well-founded, there are a range of actions it can make, including: cautions; setting conditions of practice; suspension; or striking the registrant from the Register.[19] Following the decision, the registrant has the option to appeal the decision and/or sanction to the High Court.

Overall, therefore, the emphasis of the FTPP operated for social workers is on a highly 'court-like' model of dispute resolution.

[8] *Bolton v Law Society* [1994] 1 WLR 512 at 517–519; *Gupta v General Medical Council* [2002] 1 WLR 1691 at [21]; *Khan v General Pharmaceutical Council* [2016] UKSC 64, [2017] 1 WLR 169 at [36].

[9] Ibid, *Bolton* at 519.

[10] Eg L Fuller 'The forms and limits of adjudication' (1978) 92 Harvard Law Review 353 at 405–409.

[11] National Health Service Reform and Health Care Professions Act 2002; Health Professions Order 2001, SI 2002/254 (as amended), enacted under s 60 of the Health Act 1999. Under the Children and Social Work Act 2017, s 44, the housing of the FTPP process is currently under review, see Department of Education and Department of Health and Social Care, above n 5.

[12] Health Professions Order 2001, arts 23 and 24.

[13] See *Ireland & Another v Health and Care Professions Council* [2015] EWHC 846 (Admin) at [28].

[14] Health Professions Order 2001, art 26.

[15] Ibid, art 27. From 21 December 2017 this process has been managed within the HCPC through an arms' length body, the 'Health and Care Professions Tribunal Service'.

[16] Ibid, art 22

[17] Health and Social Care Act 2008, s 112.

[18] Health Act 1999, s 60A.

[19] Health Professions Order 2001, art 29(5).

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

(b) The regulatory environment of social workers

The design choice for any dispute resolution process is not dictated by theoretical or legal prescription, but by the politics and the context in which it operates. The context in which FTPPs have evolved is wrapped up in the long history of the regulation of professionals, and a gradual shift from self-regulation to external regulatory models. In medicine[20] and law[21] for instance, self-regulation was fomerly accepted because the professions possessed reputational incentives to maintain high standards, together with the relevant expertise and technical knowledge to construct suitable standards, and administer disciplinary hearings for breaches of those standards.[22] In recent decades, however, as the public sector has expanded its reliance on professionals, the Government has come under pressure to impose external regulation to protect users from poor performance.[23]

External regulation now covers the activity of a wide array of health and care professionals,[24] transposing across to non-medical healthcare professionals,[25] including social workers. From the 1970s onwards, a series of major incidents raised extensive political, media and public concerns about the social work profession.[26] Like other countries, government policy responded by moving towards a system of social work registers,[27] with the importance of enhancing public confidence in social work services being a common objective.[28] In 2010, the responsibility for regulating social workers was transferred from a bespoke social work body, the General Social Care Council, to an umbrella lay regulator for 16 separate 'allied health professions', the HCPC.[29]

In the social work sector, the lay solution resulted in a regulator which was not affiliated with or experienced in the practice that it regulates. This dynamic created a regulatory challenge of establishing decision-making processes which are sufficiently cognisant of the technicality of the regulated activity and capable of refining the relevant professional standards in line with the shifting professional and regulatory environment.[30] To add to the challenge, key differences distinguish social work from other sectors and place the profession in a weaker position. These include the comparatively underdeveloped process for setting standards of good practice and the lack of a well embedded representative body to inform the construction of those standards.[31] Little has been done to build the profession, in contrast to other sectors where collective organisation and a commitment to improving standards is strong.[32]

Under the existing HCPC lay regulator model, where fitness to practise issues arise one result has been a narrowing focus on the conduct of individual professionals rather than organisational issues.

[20]Eg M Davies 'The future of medical self-regulation in the UK: renegotiating the state–profession bargain?' (2015) 14 Medical Law International 236.

[21]See N O'Brien and M Seniveratne *Ombudsmen at the Crossroads: The Legal Services Ombudsman, Dispute Resolution and Democratic Accountability* (London: Palgrave MacMillan, 2017).

[22]Eg A Ogus 'Rethinking self-regulation' (1995) 15(1) Oxford Journal of Legal Studies 97.

[23]Eg D Schon 'The crisis of professional knowledge and the pursuit of an epistemology of practice' in J Raven and J Stephenson (eds) *Competence in the Learning Society* (New York: Peter Lang, 2001).

[24]Eg Care Standards Act 2000.

[25]Department for Health *The Regulation of Non-Medical Healthcare Professionals* (London: TSO, 2006).

[26]Eg L Blom-Cooper *A Child in Trust: The Report of the Panel of Enquiry Into the Circumstances Surrounding the Death of Jasmine Beckford* (Wembley, Middlesex: London Borough of Brent, 1985); Lord Laming *The Victoria Climbié Inquiry* Cm 5730 (London: TSO, 2003).

[27]G Kirwan and B Melaugh 'Taking care: criticality and reflexivity in the context of social work registration' (2015) 45 British Journal of Social Work 1050.

[28]K Healy '2015 Norma Parker address: being a self-regulating profession in the 21st century: problems and prospects' (2016) 69 Australian Social Worker 1.

[29]National Health Service Reform and Health Care Professions Act 2002; Health Professions Order 2001, SI 2002/254.

[30]J Haney *Regulation in Action* (London: Karnac Books, 2012).

[31]The British Association of Social Workers (BASW) was formed in 1970 by amalgamating disparate representative groups, but it has only relatively recently (October 2011) established trade union functions to enable representation at disciplinary tribunals.

[32]Even in the proposals for the introduction of a new regulator, Social Work England, whilst the pursuit of quality is part of new body's remit, its primary concern is with 'threshold' standards rather than 'quality' standards.

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

This focus has raised concerns that there has been a reluctance to examine fully the institutional issues that might be thought to generate the conditions for malpractice or to consider what complaints tells us about 'the role and responsibility of the professional in question'.[33] Partly in response to such concerns, under the Child and Family Social Work Act 2017 a bespoke regulator for social work is being introduced.[34] This raises afresh the question of how best to deal with fitness to practise matters.

2. A framework for conceptualising procedural fairness

(a) Three underpinning elements to procedural fairness

This paper analyses FTPPs through the lens of procedural fairness because the dominant reason for their current court-like model is that they offer the most procedurally fair solution for the public and for all individuals involved in the process. That procedural fairness is the embedded rationale for FTPPs is supported by numerous government statements and judicial pronouncements.[35]

The importance of procedural fairness in decision-making has a rich jurisprudential heritage but its detail remains highly contestable both in theory and law, and is context dependent on the goals, principles and values of the decision-making system involved.[36] However, although the literature on procedural fairness does not provide a single agreed definition, three overlapping discrete elements of the concept stand out. These elements provide a 'grammar' of procedural fairness through which to understand the institutional design choices available, with each element implying that subtly different features should be incorporated into a decision-making process. They also provide useful benchmarks through which to interrogate the qualities of an individual decision-making process.[37]

The first element focuses on a process's *instrumental* capacity to deliver substantive justice, namely the correct outcome. This is the element of fairness most directly connected to the social good that a decision-making process is designed to deliver and is arguably the most important driver behind procedural design.[38] Procedural fairness requires that the potential for arbitrary discretion and bias is reduced by using procedure to force the decision maker to adhere to the purpose and values for which the decision-making power was created. In the context of FTPPs, this entails that the goal of public protection is safeguarded through processes that guarantee an independent rigorous investigation and hearing of alleged breaches of standards. To achieve the correct decision, participation of affected individuals is only necessary to the extent needed to garner a more complete understanding or to assist in the proper interrogation of different interpretations of fact, and may be outweighed by the costs.[39]

A second element is a *dignitarian* one, which emphasises the inherent value in respecting the interests of the autonomous individual.[40] Thus the importance of procedural fairness here is rooted in the value for the individual of being involved in the process and recognised as capable of asserting 'their interests and preferences'.[41] A proportionate level of participation makes it more likely that the participant will recognise the justice of the outcome and the legitimacy of the decision-making authority, as well as securing closure for all involved.[42] The dignitarian focus, therefore, addresses the potential

[33]Leigh et al, above n 3.

[34]Section 36. This body will be called Social Work England, see Department of Education and Department of Health and Social Care, n 5 above.

[35]Eg Department of Health *Regulation of Health Care Professionals. Regulation of Social Care Professionals in England.* Cm.8995 (London: TSO, 2015) at para 5.7.

[36]Eg *Lloyd v McMahon* [1987] AC 625 at 702–703 per Lord Bridge; *R v Home Secretary, ex p Doody* [1994] 1 AC 531.

[37]Eg D Hovell *The Power of Due Process: The Value of Due Process in Security Council Sanctions Decision-Making* (Oxford: Oxford University Press, 2016).

[38]D Galligan *Due Process and Fair Procedures* (Oxford: Oxford University Press, 1996).

[39]Ibid, 70.

[40]Eg J Mashaw *Due Process in the Administrative State* (New Haven: Yale University Press, 1985) 104–155.

[41]Hovell, above n 37, p 76.

[42]M Korsgaard, D Schweiger and H Sapenza 'Building commitment, attachment, and trust in strategic decision-making teams: the role of procedural justice' (1995) 38 Academy of Management Journal 60 at 68.

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for a purely instrumentally designed process either to ignore the benefits of participation or, more likely, to acknowledge participation formally to some degree, but in practice operate to hinder opportunities for meaningful participation.

A third element, *public accountability*, raises more challenging questions of a decision-making process. This element highlights the public interest in designing systems that are seen to be legitimate by a wider body of interests than those recognised by majoritarian rule alone, in particular those interests most closely involved in and impacted by the process. Transparency aids public accountability but is not sufficient, as there is always a risk that processes become too rigid and one-dimensional in their outlook. Therefore, rather than assuming that the values integrated into the decision-making process system are correct, procedural fairness can facilitate a broader ongoing re-evaluation, adaptation and reconfirmation of those values.[43] Thus, the respect of the regulated sector for decision-making authority is not merely imposed, but nurtured through the indirect participation of the community affected by decisions.[44]

(b) Thin and thick conceptions of procedural fairness

The varying elements that underpin procedural fairness are not mutually exclusive and can coexist but in institutional design there is a choice to be made as to the emphasis to give them. Further, as there is no one test of procedural fairness available to measure the quality of a decision-making process, choices are ultimately rooted more in pragmatism than principle. Such choices are aimed at finding the right balance, and are policy-based and competitive.[45] The greater the political demand for one element of procedural fairness, the less will be the influence of the others.[46] However, because all solutions will experience imperfections, institutional design is an ongoing process which responds 'to the condition of the community',[47] with 'fine-tuning' on the basis of experience inevitable[48] in order to reflect more accurately the underlying social ends and goals being pursued. For instance, the growth of alternative dispute resolution (ADR) in consumer law[49] is an example of a former understanding of what procedural fairness amounts to, embedded in the instrumental value of court-based processes to provide justice, giving way to a new approach considered more capable of accommodating additional political goals. Thus ADR is seen as an effective way to enhance the dignitarian element of procedural fairness by widening real access to justice, as well as to improve the public accountability element of procedural fairness by providing for an efficient mass dispute resolution system.[50]

The consumer law example also illustrates that in design, what might be termed 'thin' and 'thick' models of procedural fairness are available. Thin accounts of procedural fairness will tend to focus on what is formally necessary for lawful public authority, as determined in a top-down fashion by parliamentary, executive or judicial authority. Such solutions would typically defer considerable discretionary power to public decision-makers, are built primarily around instrumental accounts of procedural fairness and only nominally provide for dignitarian and public accountability elements. By contrast, thicker accounts of procedural fairness will look to secure a source of authority which includes but goes beyond formal top-down coercive power. Such solutions will typically be more committed to decision-making systems that integrate within them effective opportunity for dignitarian and

[43]P Rosanvallon *Democratic Legitimacy: Impartiality, Reflexivity, Proximity* (Princeton: Princeton University Press, 2011); TRS Allan 'Procedural fairness and the duty of respect' (1998) OJLS 497 at 510.

[44]Hovell, n 37 above, p 7.

[45]J Mashaw *Bureaucratic Justice: Managing Social Security Disability Claims* (New Haven and London: Yale University Press, 1983) p 45.

[46]Ibid, p 24; M Adler 'A socio-legal approach to administrative justice' (2003) 25(4) Law & Policy 323.

[47]Galligan, above n 38, p 15.

[48]Eg G Gee and G Weber 'Rationalism in public law' (2013) 76 MLR 708.

[49]Eg P Cortes (ed) *The New Regulatory Framework for Consumer Dispute Resolution* (Oxford: Oxford University Press, 2016).

[50]M Cappelletti 'Alternative dispute resolution processes within the framework of the world-wide access-to justice movement' (1993) 56 MLR 282.

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

public accountability elements to be fulfilled. The thicker goal here is to secure a genuine perception of justice amongst those directly impacted by decision-making processes and the regulated communities involved.

When choosing the balance between thin and thick models of procedural fairness, with decision-making processes there is a constant need for regular reflection based upon experience, with solutions dictated by what is necessary to legitimise a decision-making process. In other words, what drives shifts and redesigns to a decision-making process is the need to maintain qualities 'that provide arguments for the acceptability of its decisions'.[51] This adjustable concept of acceptability, or legitimacy, provides a bridge to understand the gap between normative claims to procedural fairness and the practice of institutional design. Legitimacy is a measure of the degree of support a body enjoys for its work, and the level of influence and power leverage it can exert on other bodies and individuals.[52]

With this in mind, likely scenarios can be anticipated in which different designs will be effective, or ineffective, in enhancing the goals and legitimacy of the decision-making process in question. For instance, the 'court-like' process of the FTPP has a clear *instrumental* purpose of delivering the collective interest in public protection against practitioners who have breached professional standards. Further, the long heritage of disciplinary panels being used to manage fitness to practise matters implies that it has been successful in securing public acceptance. Notwithstanding this heritage, indicators that a decision-making process built on this model was under-performing might include a wider loss of faith in the sector being regulated, or evidence of incorrectly decided decisions.

The integrity of the rule of law includes an acceptance that various participatory rights are included in FTPPs to ensure *dignitarian* respect for the interests of impacted individuals.[53] Indications that a respect for the interests of individuals is not being fully delivered, however, might include significant levels of lasting discontent post decision and, amongst registrants, a loss of faith or refusal to engage during the decision-making process itself.

Public accountability elements for procedural fairness might be thought to be sufficiently built into the court-like model through its public nature, with the values of the system well detailed in the law and practice of the decision-making process and the availability of an appeal route. With FTPPs, the public interest risk that they are insufficiently rigorous and allow weak practitioners to continue their trade and endanger the public[54] is guarded against by the oversight role of the 'regulator's regulator', the Professional Standards Authority.[55] However, there are other public interests that might not be well served by existing processes. For instance, the process might be too punitive on the individual practitioner, or the morale of the regulated profession might become so undermined by the process that resource strains are indirectly placed on providers through recruitment shortages, staff absences and localised walk-outs. A further risk is that the decision-making process is resource inefficient. Such inefficiency might simply relate to the financial and time cost in delivering the process, but there might also be a failure to maximise the reflective learning opportunities that any decision-making process creates. In the dispute resolution literature there is a wealth of information on the knowledge-rich potential of complaints.[56] Thus, although any one complaint might be associated with a single complainant, it is often the case that the grievance can tell us something organisationally useful about its causes that can assist in preventing similar instances occurring. Indicators that a process is not satisfactorily delivering might include organised campaigns against the decision-making process, government plans for reform, or loss of morale in the sector.

[51]Mashaw, above n 45, p 24.

[52]Eg D Beetham *The Legitimation of Power* (London: Macmillan, 1991); D Easton *A Framework for Political Analysis* (Englewood Cliffs: Prentice-Hall, 1965).

[53]*Osborn v Parole Board* [2014] AC 1115.

[54]Eg J Chamberlain 'Malpractice, criminality and medical regulation: reforming the role of the GMC in fitness to practise panels' (2017) 25(1) Medical Law Review 1.

[55]The Professional Standards Authority has power to bring appeals against decisions of FTPPs if it views them as too lenient. It also has a place on the Advisory Board for Social Work England, see https://www.professionalstandards.org.uk/home.

[56]Eg R Thomas 'Administrative justice, better decisions, and organisational learning' (2015) Public Law 111.

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

3. Social workers: a case study into procedural fairness

(a) Methods of inquiry

To gain a picture of the procedural fairness of FTPPs used to consider referrals against registered social workers (hereafter registrants), this paper is based upon a mixed methods study. The paper draws upon published material and research on the HCPC and the findings of three discrete, small-scale empirical studies.

In the first, the 'Interview' study, semi-structured interviews were held with eight qualified social workers, all of whom had been subject to the HCPC process for professional misconduct.[57] Participants were chosen whose outcomes reflected the proportion of outcomes of all cases.[58] The interviews were designed to understand the underlying dynamics, motivations and experiences behind the actions of social workers subject to professional misconduct hearings.[59]

In the second, a 'Case Review' study was undertaken of the publicly available notes of 34 fitness to practise hearings of HCPC cases involving social workers from August 2012 to 31 December 2014. The sample was selected to choose only cases in which individual practice concerns were at issue as opposed to personal character (eg caused by allegations of abuse of drugs or alcohol, or allegations of fraud or crime).[60] Practice concerns were focused on because they were more likely to raise wider sector-specific concerns about the organisational expectations of social workers. Cases were coded using a content/thematic analysis in which themes identified for coding were selected primarily based on recurrence, pattern and relationship.[61]

In the third study, to understand the depth of procedural fairness required by the law, a content analysis was undertaken of the case law of all reported appeals against decisions of the HCPC, and its predecessor the Health Professions Council, up until January 2018.

The combination of these studies is qualitative, not quantitative. In other words, the samples reviewed are too small to draw definitive conclusions, but alongside the available evidence elsewhere the evidence uncovered does raise significant concerns as to the long-term viability of the FTPP as applied to social workers in its current form.

(b) Delivering instrumental goals

FTPPs are primarily legitimised on the basis that they deliver the instrumental element of procedural fairness. This entails that the process achieves clear decisions through a publicly transparent process within which complaints against registrants are tested objectively by an independent investigator and then a separate independent panel.

The HCPC is responsible for 350,330 registrants, almost half of whom are social workers in England.[62] Dealing with complaints currently accounts for almost half of the HCPC's overall expenditure, and costs have risen consistently in recent years.[63] Of those complaints, most (54%) involve social workers,[64] and individual social workers are proportionally more likely to be referred than

[57]Full details of the research can be found in Worsley et al, above n 3.

[58]Of the eight social workers, interviewed three were found to have No case to answer/No further action, a further three received either a caution/warning/or conditions of practise, and two were struck off the HCPC register. By way of comparison, the HCPC figures show that of the 155 cases where social workers were taken before a FTP hearing that year (1 April 2014–31 March 2015) approximately 25% received a caution or conditions of practise, 32% had no further action/no case to answer and 43% were either struck off or suspended: HCPC *Annual Fitness to Practise Report* (London: TSO, 2015).

[59]P Beresford 'The role of service user research in generating knowledge-based health and social care: from conflict to contribution' (2007) 3(3) Evidence and Policy 329.

[60]Leigh et al, above n 3.

[61]V Braun and V Clarke 'Using thematic analysis in psychology' (2006) 3 Qualitative Research in Psychology 77; M Carey *Qualitative Research Skills for Social Work* (Farnham: Ashgate, 2012).

[62]HCPC *Fitness to Practise, Annual Report 2016/17* (London: TSO, 2017) 11.

[63]HCPC *Annual Report: Key Financial Information 2016/17* (London: HCPC, 2017) 8–9.

[64]HCPC, above n 62, at 14.

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

other professionals (1.33% in 2016/17), with the only other profession near the same level being paramedics (1.23%).[65] This pattern might be explainable by the nature of social work, which is often contentious in terms of the social worker's need to navigate the boundaries between public and private life, and deal with highly sensitive issues.[66] This ongoing potential for public criticism is reflected in the scale of complaints coming from the public (62.6%), more than any other profession.

Many of these referrals are filtered out before full investigation, but a significant number (approximately 200 social work cases per annum) still get passed on by the Investigation Committee to the CCC for a full hearing.[67] Once at the CCC, for the period 2012–17, 72% of cases led to some form of sanction against the registrant.[68] By themselves, these statistics tell us nothing about the quality of the decisions being made in terms of their correctness, but two themes stand out from the research, which inform the nature of the instrumental procedural fairness provided.

(i) The appeals process guarantees the process not the outcome

Although the FTPP allows for an appeal to the High Court, this is a limited and costly form of safeguard against incorrect decisions. According to the HCPC's annual reports, through 2012–17, compared to the 1121 cases that resulted in a sanction, only 21 were appealed, with six of these cases withdrawn or refused before hearing and only five leading to the case being remitted back to the HCPC for reconsideration.[69] In one of those remitted cases the original decision was then remade by a fresh panel and subsequently unsuccessfully appealed.[70] In the others the sanction was reconsidered.[71]

The rare use of the appeals process and its low success rate for registrants might indicate the robustness of the initial decision-making process, but there are good reasons for not drawing this as a necessary conclusion. In processing appeals against the HCPC, the courts operate a restricted mandate, as with other existing disciplinary routes such as that operated by the General Medical Council.[72] One aspect of this approach is that an appeal to the court does not involve a re-hearing of the evidence.[73] The focus is instead on establishing whether the original decision is manifestly wrong or there exists a serious procedural or other irregularity. In considering appeals, considerable deference is given to the specialist nature of the disciplinary panel.[74] A review of the grounds that have been used to quash decisions of the HCPC and its predecessor reveals that the court has largely declined multiple legal arguments to critique the processes adopted by the CCC.[75] Occasionally the court has picked holes in the

[65]Ibid, 16.

[66]G Bisell *Organisational Behaviour for Social Work* (Bristol: Policy Press, 2012).

[67]HCPC, above n 62, at 42.

[68]According to the HCPC reports over the 2012–17 period there were 1522 decisions of which 1121 resulted in some form of sanction, HCPC *Annual Fitness to Practise: Key Information Reports, 2013–2017*, available at http://www.hcpc-uk.org/publications/reports/index.asp?id=710 (accessed 8 February 2019).

[69]Not all of these cases are available online, but published cases in the equivalent period include: *Clery v HCPC* [2014] EWHC 951 (Admin); *Levett v Health And Care Professions Council* [2015] EWCA Civ 580 (plus preceding HC case); *Goodwin v Health and Care Professions Council* [2014] EWHC 1897 (Admin); *Ireland & Another v Health and Care Professions Council* [2015] EWHC 846 (Admin); *Leeks v Health and Care Professions Council* [2016] EWHC 826 (Admin); *Chigoya v Health and Care Professions Council* [2015] EWHC 1109 (Admin); *David v Health and Care Professions Council* [2014] EWHC 4657 (Admin); *David v Health and Care Professions Council* [2015] EWHC 4082 (Admin); *Falodi v Health and Care Professions Council* [2016] EWHC 328 (Admin); *Davies v HCPC* [2016] EWHC 1593 (Admin); *Redmond v Health and Care Professions Council* [2016] EWHC 2490 (Admin); *Estephane v Health And Care Professions Council* [2017] EWHC 2146 (Admin); *McDermott v HCPC* [2017] EWHC 2899 (Admin).

[70]*David*, above n 69.

[71]Additionally, in *McDermott*, above n 69, the court replaced a suspension order with a conditions of practise order.

[72]*Falodi*, above n 69; Lindblom J in *Rice v Health Professions Council* [2011] EWHC 1649 (Admin) at [11]–[17].

[73]*Fish v GMC* [2012] EWHC 1269 (Admin) at [28] and *Redmond*, above n 69 at [7]–[8], HHJ David Cooke.

[74]CPR 52.11.3 and *Ghosh v General Medical Council* [2001] 1 WLR 1915, 1923, at [34], Lord Millett.

[75]An exception is *Reyburn v The Health Professions Council* [2008] EWHC 476 (Admin) (failure to hear the oral evidence of key witnesses).

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

quality of the reasons or evidence used by the CCC to justify its decisions[76] and found that sanctions have been disproportionate to the finding.[77] However, even where an appeal is upheld, the case is ordinarily remitted back to the original decision-maker for a rehearing.

The court in the appeal process, therefore, operates as a high level form of quality control and does not focus on the quality of the outcomes generated, other than to test for perverse or badly reasoned decisions. An indication that the courts recognise their limitations can be seen in two cases,[78] in both of which the judge, in some apparent sympathy with the registrant concerned, specifically advised the appellant to pursue the HCPC's internal review process.[79]

(ii) The emphasis on credibility, remorse and insight

The limits to the practical impact of the appeals process places a strong onus on the CCC to guarantee the correct outcome. A common theme in FTPPs across professions, however, is the emphasis placed upon the credibility of the registrant and their capacity to demonstrate remorse and insight.[80] This pattern was repeated in the 'Case Review' study conducted for this paper,[81] which revealed a tendency for decisions to be in part based upon an assessment of the credibility of the witness. For instance, in 14 out of 21 cases in which the registrant was struck off, their credibility was mentioned as being a deciding factor,[82] even though the registrant did not attend the hearing and reliance was placed instead on earlier submissions made by the registrant (eg at a disciplinary hearing or at the investigation stage).[83] The study also found some evidence that the capacity to show remorse and insight is significant. In particular, in each of the three cases in which 'no further action' was applied, some form of acceptance of their error on the part of the registrant was demonstrated. Additionally, where sanctions were applied short of 'striking off', an ability to demonstrate insight into the errors of their practice was also a common theme.[84]

A further risk with FTPPs is that the search for truth is deprioritised in favour of obtaining acknowledgment of error on the part of the registrant.[85] Evidence of the importance of attendance in social work FTPPs can be garnered from the underlying facts at issue in the cases which were reviewed in the 'Case Review' study. In the study, examples were found of a registrant being struck off, where the allegation that was being considered was less serious or equivalent to some of the cases in which registrants who received lesser penalties such as 'conditions of practise' or a 'caution'. For example, with the case of 'H'[86] the allegations spanned three pages and included poor communication, insufficient record and time keeping, not meeting service users and making inappropriate comments. Notwithstanding the seriousness of the matters being dealt with, the registrant was able to show 'some insight' into his 'failings' by expressing his 'genuine regret' for them. It was felt by the Panel that his fitness to practise was not currently impaired and he was thus given a caution. This compares with a similar case of 'C' who did not attend but who was struck off for not keeping up to date on case records.[87]

[76] *Ryell v Health Professions Council* [2005] EWHC 2797 (Admin); *Brennan v Health Professions Council* [2011] EWHC 41 (Admin); *Levinge v Health Professions Council* [2012] EWHC 135 (Admin) (insufficient evidence to ground decision); *David,* n 69 above (applied the wrong test for dishonesty).

[77] *R (on the application of Howlett) v Health Professions Council* [2009] EWHC 3617 (Admin); *Levinge* above n 76; *McDermott,* above n 69.

[78] *R (on the application of Azam) v Health Professions Council* [2005] EWHC 1129 (Admin); *Muscat v Health Professions Council* [2009] EWCA Civ 1090.

[79] A process required by the Health Professions Order 2001, art 30(7).

[80] Case, above n 4.

[81] For details see Leigh et al, above n 3.

[82] Ibid, at 388.

[83] Ibid.

[84] Ibid, at 391–394.

[85] Case, above n 4, at 611.

[86] Leigh et al, above n 3, at 391.

[87] Ibid, at 389.

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Any decision-making process is going to be prone to inconsistency, but other studies have suggested that defining and measuring suitable conduct for social workers is problematic.[88] The concern is that the ability of a registrant to attend his/her hearing has a strong influence on the outcome and the sanction, possibly more than the perceived seriousness of a registrant's misconduct or competence.[89]

(c) The dignitarian model

To achieve procedural fairness in dignitarian terms the individual affected must have the opportunity to participate in the process. Under FTPPs, the registrant is directly involved at the investigation stage and has a right of attendance at the hearing itself. Non-attendance is unlikely to be a ground for review,[90] and according to the Scheme's rules cases can proceed without the registrant present if the CCC is satisfied that notice has been duly served and it is just to do so.

Non-attendance occurs in almost half of all cases that end in a hearing,[91] despite the manifest advantages in attending. Table A is based on the annual reports of the HCPC and details that when a registrant *attends* a hearing they are cleared in three times more cases than when they do not attend. The same data indicates that being *represented* at the hearing further increases a registrant's likelihood of success. This finding was reflected in the 'Case Review' study,[92] in which of the 21 cases that resulted in the strongest sanction, namely the registrant being 'struck off', in none was the registrant present or represented at the hearing. By contrast, of those nine registrants that were given lesser penalties, namely cautions or conditions, seven attended the hearing. In the four cases that were concluded with a ruling that no further action should be taken, the lightest of sanctions, all registrants attended.[93]

The finding that there is a correlation between attendance and outcome is neither surprising nor new, and mirrors equivalent studies on FTPPs.[94] Nor does it necessarily indicate that there is a problem. It might be that the low levels of attendance reflect a self-recognition of the registrant's misconduct or that the participatory input of the registrant at earlier stages in the process suffices to fulfil expectations of procedural fairness.

The research suggests, however, that there are more likely explanations for both non-attendance and non-representation. From the 'Interview' study the cost of legal fees was a commonly cited by participants as a reason for not being represented, and those participants that did employ lawyers paid between £5000–£15,000 in legal fees.[95] The prospect of additional legal fees, and costs orders, at the appeal stage provide a further intimidatory element to the process.[96] Further, because most hearings are held in London, travel costs are expensive for those living outside the south-east. Other practical factors likely to discourage attendance include the length of proceedings, sometimes taking several days and overrunning, with witnesses being told they need to return the following day. Such circumstances incur substantial additional costs in terms of lost wages, hotel, transport and meal costs, as well as personal difficulties in terms of familial and/or other responsibilities.[97] In combination, the drawn out process of the FTPP procedure, and the legal costs, resulted in three out of eight of the participants in the 'Interview' study withdrawing their engagement in the process.[98]

[88]F Wiles 'Blurring private–professional boundaries: does it matter? Issues in researching social work students' perceptions about regulation' (2011) 5(1) Ethics and Social Welfare 36.

[89]K McLaughlin 'The social worker versus the General Social Care Council: an analysis of care standards tribunal hearings and decisions' (2010) 40(1) British Journal of Social Work 311 at 314.

[90]*Azam*, above n 78.

[91]HCPC, above n 62, at 44.

[92]Leigh et al, above n 3.

[93]Ibid.

[94]McLaughlin, above n 89.

[95]Worsley et al, above n 3, at 2429.

[96]See for instance *David*, above n 69, where the legal cost order imposed on the appellant was £10,000.

[97]Worsley et al, above n 3, at 2429–2431.

[98]Ibid.

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

Table 1: Outcomes in percentages at the CCC depending on attendance and representation[139]

	Sanction	No sanction
Represented	57	43
Attend without representation	65	35
Non-attendance	89	11

[139]Data taken from the annual reports of the HCPC.

The lack of legal representation and the consistent non-attendance of registrants suggests that in many instances the HCPC fails to establish a clear voice for the accused registrant in FTPPs, one that it is unlikely to be fully replaced by the use of written evidence, given the strong evidence that attendance does influence outcomes. The 'Interview' study also found that information-provision was weak and the level of support offered and available to registrants low. Notwithstanding the formal material made available by the HCPC, the 'Interview' study found that without legal support registrants were left under-informed of the process that they were entering into, in some cases not even knowing why a referral had been made. Alongside the prohibitive financial costs of obtaining legal support, other cultural and empirical factors help explain the disproportionality of the process. In particular, unlike in other professions, for social workers there is a relatively low influence of the trade unions or organised professional support for registrants, nor is there an embedded practice of insured support. This minimally effective support structure distinguishes social workers from many other more well-paid professions, from which the dominant court-like model of the FTPP has derived.

To add to the stress of the process, as with other FTPPs,[99] registrants often have to wait significant periods of time for their case to be heard.[100] The HCPC statistics evidence that an average length of time for FTPP is 20 months from initial referral to decision, with some cases lasting over two years, with a common theme the time it takes for the HCPC to gather its evidence.[101] During these lengthy waiting times registrants often cannot work and can face financial difficulties, a situation exacerbated for those without a working partner or spouse to support them during this time. The health consequences can be considerable. Of the eight respondents in the 'Interview' study, five revealed that they had either attempted suicide or had suicidal thoughts.[102] Commonly, interviewees experienced prolonged distress which stemmed from a fear of failure and loss of professional identity. The fear of making another 'mistake' and being reported to the HCPC was a common theme and led to defensive techniques being implemented or to participants changing role completely. [103] Many of the participants in the 'Interview' study talked of experiencing ongoing and debilitating stress that either left them feeling paranoid that this would happen again or meant they felt unable to return to social work. With the profession struggling to maintain morale and retain experienced practitioners,[104] this is a major concern.

Two further points on the dignitarian element of the FTPP suggest that there is an embedded inequality of arms in the process, despite the HCPC's resources being entirely funded by registrant fees. First, in contrast to the registrant, the HCPC is always legally represented at the hearing.

[99]Professional Standards Authority *Annual Report and Accounts and Performance Review Report 2012–2013, Volume II Performance Review Report 2012–13*. HC 305-II (SG 2013/93), at 24.

[100]Research works *Public Response to Alternatives to Final Panel Hearings in Fitness to Practise Complaints* (St Albans: Research Works, 2013) available at https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/public-response-to-alternatives-to-final-panel-hearings-2013.pdf?sfvrsn=6 (accessed 8 February 2019).

[101]HCPC, above n 62, at 37.

[102]Worsley et al, above n 3, at 2433.

[103]Worsley et al, above n 3.

[104]P McFadden, A Campbell and B Taylor 'Resilience and burnout in child protection social work: individual and organisational themes from a systematic literature review' (2015) 45 British Journal of Social Work 1546.

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Second, whereas the process offers no financial and very little logistical support to the registrant, the HCPC's witnesses are funded to attend.

(d) Public accountability

Multiple features of the court-like model, such as its transparency, objectivity and in-built appeal mechanism, provide for ways through which decisions can be publicly called to account, but to what extent do FTPPs integrate the values and operational pressures of the sector it oversees? The close connection between individual malpractice and organisational dysfunctionality was a theme that was highlighted in the 'Interview' study. In all eight interviews conducted, interviewees raised managerial concerns and experience of highly complex caseloads. This connection can also be observed in the frequency with which referrals made by employers made reference to organisational matters, such as recording, carrying out assessments or investigations, and following management instructions. The regularity in which such organisational issues are core to referrals was evident in a previous study by Furness, which carried out a content analysis of 265 social work conduct hearings held between 2006 and 31 July 2012.[105] Additionally, in some cases registrants self-refer themselves to the HCPC as a means to clear their names in ongoing disputes with their employers.

To explore the extent to which FTPPs considered the potential impact of organisational pressures on registrants, the 'Case Review' study deliberately selected cases in which it was the registrant's professional conduct, as opposed to personal conduct, that was under scrutiny. However, this study found that in only three out of 34 cases were organisational issues considered to any extent or impacted on the final decision.[106]

By way of example, Case 'I' involved allegations of misconduct due to 'deadlines being missed' and was supported by a letter from the registrant.[107] The Panel found that she had only 'demonstrated limited acknowledgement of her failings' but accepted that the Children and Family Court Advisory and Support Service (CAFCASS), the referring organisation, were experiencing 'organisational changes'. These issues may have contributed to the registrant's problems and subsequent resignation, as it became apparent in the hearing that her previous line manager, who had no issue with her practice before she went on sick leave, was also 'off sick'. The Panel decided only to issue a caution but there was no recommendation that the organisational issues should be explored any further. Similarly, in Case 'J' the Panel found competence issues 'understandable' because of problems emerging from the referring organisation.[108] Nine allegations of misconduct were filed by the local authority against J (who had been a team manager) ranging from closing cases early, not responding to cases in a timely manner, allocating cases to a support worker instead of a social worker, fabricating case notes and other actions of dishonesty. Yet once the Panel heard evidence from the registrant, it decided to take no further action, accepting 'the Registrant's uncontroverted evidence' that problems occurred due to 'staffing shortages in her locality' and that the allegations emerged, in part, because of 'practices within the Council'. However, without a recommendation that the organisational problems should be investigated further, the likelihood is that such issues persisted and, in turn, affected other social workers employed there.

This low level concern with organisational matters reflects the stated policy of the HCPC, which is to retain a strict dividing line between regulatory and disciplinary perspectives even where organisational issues are raised, as its focus is on the individual professional. This approach can be contrasted with other regulatory processes in the sector, such as serious case inquiries which, whilst they provide a narrative and moral judgement about the conduct of professionals, also consider organisational factors that may have affected practice.[109] Elsewhere, concerns have been raised that individual social

[105]S Furness 'Conduct matters: the regulation of social work in England' (2015) 45 British Journal of Social Work 861 at 870.

[106]Leigh et al, above n 3.

[107]Ibid, at 391.

[108]Ibid.

[109]Ibid.

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workers could be held accountable for failings that are ultimately rooted in more systemic or organisational problems such as high caseloads, inadequate resources and poor staff supervision.[110] This leads to an additional concern that sometimes providers might be using FTPPs to avoid organisational responsibilities towards managing underperforming staff, a practice alleged by participants in the 'Interview' study. Previous policy research has highlighted that social workers need to be in a supportive and enabling environment if they are to practise effectively.[111] By contrast, FTPPs risk creating distrust because almost their entire focus is on the action and behaviour of the individual social worker, a focus which risks individualising and scapegoating the social worker whilst neglecting systemic issues.

4. Alternative design choices

(a) A thin procedural fairness regime

Appropriately resourced FTPPs are capable of offering thick procedural fairness. In previous work, the court-like design of the FTPP has been described as facilitating a 'redemption model' of decision-making, through which the registrant is guided towards accepting the power of professional norms. Within this model, the goal of public protection is the main driver and outcomes are strongly influenced by whether or not registrants are willing to attend hearings and demonstrate a level of understanding and contrition.[112] But although the model risks a 'contrived exchange' between the registrant and the FTPP,[113] a strong dignitarian element of procedural fairness can be integrated. To achieve this outcome, however, participatory opportunities need to be institutionally supported to enable registrants either to defend their actions or come to terms with their divergence from expected practice. Public accountability goals of procedural fairness can also be realised through FTPPs where the relevant sector retains a strong role in highlighting institutional failings and supporting its members. These latter roles are particularly powerful in the case of medicine for instance, in that the profession still has a key input into the development of the standards which are applied in FTPPs.

Notwithstanding the potential of FTPPs, the evidence compiled in this paper indicates that for social workers the process provides a thin version of procedural fairness. The acknowledgment ritual that underpins the redemption model of FTPPs works best where the system proactively supports the registrant in terms of attendance, and through the advice of lawyers and the profession itself. By contrast, in the social work FTPP, the process provides a formal display of justice but achieves only a thin procedural fairness regime because the effective capacity of the sector to support the registrant is limited. This relationship structure is also, arguably, mirrored within the social work provider organisations where human resources departments are structured to support management performance on behalf of managers rather than employees. Additionally, for social workers, the voice and the perspective of the regulated sector has been much minimised through the imposition of lay regulation, combined with the financially and organisationally weak structure of the social worker profession. As a result, the achievement of the dignitarian and public accountability elements of procedural fairness are operationally weak in social work FTPPs. The arduous nature of the process leads to a large proportion of registrants being unable to participate meaningfully, or benefit from the in-built process of conciliation which operates for richer FTPPs. Further, there is an underlying tension with the social work FTPP in that it is unclear that social workers themselves have fully bought into the values that the process enforces, with a suspicion that it insufficiently recognises the organisational dynamics that

[110]E Beddoe 'Surveillance or reflection: professional supervision in the "risk society"' (2010) 40(4) British Journal of Social Work 1279.

[111]E Munro *The Munro Review of Child Protection: Final Report – A Child-centred System* (London: Department for Education, 2011).

[112]Case, above n 4.

[113]Ibid, at 591.

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influence instances of misconduct. Other studies have critiqued equivalent processes in other professions as convoluted, time consuming and expensive.[114]

The high public profile that has been attached to failings in child care regimes in recent years suggests that there will always be a demand for a strict 'court-like' model for social worker FTPPs. This dynamic has been in place since at least 1973, when social work was first linked to a child's death that was perceived to have been preventable,[115] to more recent years when the detailed media reportage of the suffering of 'Baby P' had a profound impact on social, cultural and political group anxieties. As a result, social work practice has been dominated by continuous reform, which has led to increasing bureaucratic and procedural approaches being implemented in the hope of eliminating uncertainty and risk.[116]

Nevertheless, there are policy pressures in the opposite direction. An inquiry into the *State of Social Work* identified that there is growing evidence of crisis in the profession as the current practice conditions present a notable challenge to social work morale and staff retention given the extreme stresses faced by both children's and adults' services.[117] Coupled with the perception of unfairness surrounding the existing FTPP, these pressures may mean that alternative regulatory strategies become inevitable. Diverging strategies in professional regulation, including within FTPPs, is a known phenomenon. For instance, following a review of disciplinary decisions against doctors and solicitors, Case has demonstrated that the professional discipline process for doctors is more lenient with regard to dishonesty than that for solicitors because of certain key factors pertaining to doctors.[118] Plausibly this outcome reflects the value placed on respective professions and their relative dispensability. Socially, doctors are more trusted than solicitors and the public interest in retaining the services of a relatively scarce commodity, a fully trained doctor, weighs more heavily against the need to retain public confidence in the profession than the equivalent equation with solicitors. Regulatory design, therefore, is driven in part by responsive regulation strategies,[119] in which by various means the needs of the sector help shape the manner in which regulation is implemented.

The need to respond proportionally to sector concerns in professional regulation has become a feature of recent Government consultations,[120] but the key lies in matching the relevant environmental factors to the proposed model.[121] The court-like model of professional discipline is expensive and is anachronistic in its inefficient formality in an era when civil and criminal justice reforms are innovating in new ways to introduce case management reform. Plausibly, to cover the likelihood of high numbers of referrals involving social workers, registrants could be required to take out insurance, but such a measure would only further shift the burden onto the professional. The introduction of a new regulator for social work, however, has provided a convenient opportunity to remodel the system for FTPP.[122]

[114]See for example Health Committee *2013 Accountability Hearing with the Nursing and Midwifery Council* HC699 (2013–14); Health Committee *2013 Accountability Hearing with the General Medical Council* HC 897 (2013–14).

[115]I Butler and M Drakeford *Social Work on Trial: The Colwell Inquiry and the State of Welfare* (Bristol: Policy Press, 2011).

[116]J Warner '"Heads must roll"? Emotional politics, the press and the death of Baby P' (2013) 44(6) The British Journal of Social Work 1637.

[117]All Parliamentary Party Group *Inquiry into the State of Social Work* (Birmingham: British Association of Social Workers, 2013), available at https://www.basw.co.uk/resources/inquiry-state-social-work-report (accessed 8 February 2019).

[118]P Case 'Doctoring confidence and soliciting trust: models of professional discipline in law and medicine' (2013) 29 Professional Negligence 87. See also J Chamberlain 'Doctoring with conviction: criminal records and the medical profession' (2018) 58(2) British Journal of Criminology 394.

[119]I Ayres and J Braithwaite *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: Oxford University Press, 1992).

[120]Department of Health *Promoting Professionalism, Reforming Regulation: A Paper for Consultation* (Leeds: DoH, 2017). Professional Standards Authority *Right-touch reform: a new framework for assurance of professions* (Nov 2017), ch 3, available at www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-reform-2017.pdf?sfvrsn=2e517320_7.

[121]O Kahn-Freund 'On the uses and misuses of comparative law' (1974) 37(1) MLR 1.

[122]Department of Education and Department of Health and Social Care, above n 5.

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(b) Adding a hybrid element to the fitness to practise process

One alternative is to reconsider the court-like rigidity of the existing FTPP by shortening the process and reducing the occurrence of hearings. Recognising the potential for many of the concerns raised in this paper, previously the Government has accepted that wider regulatory goals are not best promoted by a monolithic approach to handling fitness to practise issues.[123] Until very recently, though, there has been a reluctance to think imaginatively about how this process could be reformed, with considerations of public protection paramount.

Of the alternative models available, the adoption of a mediation focused process has already been raised as a possibility and rejected.[124] However the Government has passed regulations which will allow for a shift towards an early resolution model, whereby the accepted disposal of cases with registrant consent is facilitated through the recommendation of 'case examiners' upon receipt of reports by 'investigators'.[125] When put in place, what we will see in the design of the social work FTPP is a more 'hybrid' structure of dispute resolution which is novel to the FTPP sector and more in line with that operated within some parts of the ombudsman sector, such as the Scottish Legal Complaint Commission (SLCC).

The SLCC does not deal with conduct proceedings against legal professions, as these are transferred to a standard 'court-like' FTPP model managed by a separate professional body.[126] Nevertheless, although a form of ombudsman which deals with service complaints only, the SLCC operates in a more structured fashion than standard complaints processes, making it an interesting example of a hybrid model of dispute resolution which could be replicated for fitness to practise matters in a profession such as social work.

The SLCC process involves five layers of decision-making, with each layer taking on a more court-like hue.[127] At the first layer, complaints are received and *eligibility* issues considered, with complaints transferred out of the system to a relevant professional body if the SLCC classifies it as a conduct complaint.[128] The second and third stages of the SLCC model embeds a *mediation* stage and then an *investigation* stage within its operation, both of which are designed to facilitate an early agreed settlement of a dispute if possible and appropriate. The fourth stage in its process is a formal *determination* of the matter before an independent panel if either party to the dispute reject the SLCC's findings or recommendations. Here the SLCC model differs from most ombudsman schemes, in that not only is a formal panel allowed for but the decision of the determination panel is final, subject to the option to move to a fifth stage, a judicial *appeal*.

In mimicking elements of this hybrid model of dispute resolution for social work FTPPs, the key innovation is the third stage, in which the investigation is used to settle the matter before a hearing *even if* the registrant is found to have breached standards and *even if* a sanction is being recommended. The standard objection to this solution is that it is contrary to ordinary expectations of procedural fairness in disciplinary processes for sanctions to be made without a hearing. But the Government's proposals recognise that procedural fairness is a fluid concept, which allows decision-making processes to be designed proportionally to the context in which they operate.

[123]Department of Health, above n 35, para 5.8 and Law Commission, Scottish Law Commission, Northern Ireland Law Commission *Regulation of Health Care Professionals. Regulation of Social Care Professionals* Cm 8839 (London: TSO, 2014) pp 131–134.

[124]Department of Health, above n 35, para 5.27.

[125]Social Workers Regulations 2018, SI 2018/893, reg 25 and Sch 2.

[126]Either the Law Society for Scotland or the Faculty of Advocates.

[127]Scottish Legal Complaints Commission *Overview of the process for dealing with service and conduct complaints*, available at https://www.scottishlegalcomplaints.org.uk/making-a-complaint/complaints-process.aspx (accessed 8 February 2019).

[128]Following the decision in *Anderson Strathern Llp v The Scottish Legal Complaints Commission* [2016] ScotCS CSIH_71, [23]–[29], it is no longer lawful for a complaint to be treated as a 'hybrid complaint', ie investigated both by the SLCC (for service matters) and a professional body (for conduct matters).

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In this sense, and viewed through the tripartite elements of procedural fairness adopted in this paper, the model looks promising, subject to some significant qualifications.

(i) Is the hybrid model instrumentally fair?

Instrumentally, the goal is to reduce the number of panel hearings, cost and time in the processing of fitness to practise allegations, whilst retaining the veneer of rigour in terms of public protection.[129] A key concern here, however, is minimising the risk of incorrect outcomes as a result of the non-use of hearings. On this, five points in favour of the solution can be noted.

First, given that currently decisions at the hearing stage are largely driven by a registrant's capacity to attend and willingness to express contrition, it is unclear that the registrant would be disadvantaged by at an earlier stage choosing to forgo a hearing in circumstances where there is a lack of support structure to help him/her take advantage of that opportunity.

Second, for less serious sanctions the requirement for the consent of the registrant could be sufficient provided offsetting safeguards were in place. Indeed, the Law Commission has previously concluded that the court-like model need not always be followed for FTPPs.[130] Under Article 6 of the European Convention on Human Rights, access to a tribunal is required in certain circumstances where a civil right is in play. If an individual has a legal expectation of registration then their position on the register can be considered to represent a civil right, the removal of which requires the authority of a tribunal. Further, the case law suggests that a limited right to appeal or review to the higher courts should be made available in such circumstances.[131] But this body of law does not necessitate that all fitness to practise matters need to be dealt with through a tribunal. Where the sanctions being imposed amount to conditions of practise only, it is doubtful that Article 6 obligations apply at all,[132] and with the common law on natural justice the correct process is dependent on the context of the dispute being considered.[133] Given this analysis, however, an area of the current proposals that needs to be reconsidered is the proposal that a registrant could be removed from the register by the 'accepted disposal' process.[134]

Third, the hybrid process being proposed for the social work FTPP builds in an additional safeguard by separating out the functions of investigation and determination. Thus on completion of the investigation, the investigator passes on their report to 'two or more case examiners'[135] who are then responsible for recommending closure of the case by way of 'disposal without hearing'.[136] Bolstered by this separation, compared to the present situation, the determinations made by the case examiners could be much more selective in identifying those cases where a breach of standards has occurred but for which a less serious sanction is sufficient and can be delivered through the 'disposal without hearing' process.

Fourth, case examiners would not have the final say in closing an investigated referral. Thus, not only would it be a prerequisite for the registrant to consent to any sanction imposed, the registrant will have a right to request a formal determination of their referral, ie a hearing.[137]

[129]Department of Education and Department of Health and Social Care, above n 5.

[130]Law Commission, above n 123, ch 8.

[131]Eg *R (Royal College of Nursing) v Secretary of State for the Home Department* [2010] EWHC 2761 (Admin), [2011] 2 FLR 1399 at [92].

[132]Eg *R (Nicolaides) v General Medical Council* [2001] EWHC Admin 625, [2001] Lloyd's Rep Med 525 at [28]–[32]. This was also the view of the Law Commission, see above n 123, para 8.39.

[133]*Doody*, above n 36.

[134]A particular problem is the ability of case examiners to impose interim orders suspending registrants from practising: L Stevenson 'New fitness to practise process could threaten social workers' human rights, professional body warns' Community Care (22 February, 2018), available at: http://www.communitycare.co.uk/2018/02/22/new-fitness-practise-process-threaten-social-workers-human-rights-professional-body-warns/ (accessed 8 February 2019).

[135]Social Workers Regulations 2018, Sch 2, para 3.

[136]Ibid, Sch 2, para 9.

[137]Ibid, Sch 2, para 10(1).

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

Finally, a further safeguard against inadequate procedural fairness already exists within the standard FTPP model. The process is buttressed by the role of another body, the Professional Standards Authority for Health and Social Care, which reviews all final decisions made by the regulators on fitness to practise and can challenge decisions should it view its findings as unduly lenient.

(ii) Does the hybrid model enhance dignitarian and public accountability models of fairness?

The research that supports this study has identified that the current operation of the social work FTPP process inadequately integrates the registrant's voice or factors in all relevant institutional factors. To get around these barriers, placing the enhanced onus on inquisitorial methods may offer a very appropriate methodology of dispute resolution for the social work sector. The distinct difference that gives cause for optimism in the hybrid design as operated by a body such as the SLCC and other ombudsman schemes is that, more than a strict court-like process, an inquisitorial process offers the potential for decision-makers to be more proactive and innovative in the methods deployed to investigate and resolve a complaint. Much work may still be based on paper submissions but, as is appropriate, telephone calls, internet conferences and site visits are a feature of the ombudsman model and could be more readily applied to the FTPP process. A further encouraging feature of inquisitorial ombudsman processes is the capacity to use the dispute resolution process to identify system failings in organisations that might have underpinned isolated instances of error. The objective, in other words, goes beyond remedying the individual complaint and looks to enhance organisational accountability.

Hybrid models of decision-making therefore offer rich potential for procedural fairness. However, hybrid models such as the ombudsman do not uniformly achieve procedural justice in the eyes of the user.[138] The inference is that positive outcomes in dignitarian and public accountability terms cannot be guaranteed and require planned investment. As currently drafted, the proposed new social work FTPP seems quite an oppressive model, one designed to help the regulator streamline the decision-making process rather than assist the social worker. This may benefit the social worker in terms of shortening the pain of being subject to fitness to practise proceedings, but so long as the process remains paper-based and there is no commitment to support registrants more proactively through the process, then the gains in thicker procedural fairness terms will be minimal. Further, unless an enhanced willingness to engage in institutional shortcomings is integrated into the process, then the concerns of the profession about being blamed for both the contextual and organisational challenges of social work will continue to undermine morale.

Conclusion

This paper has questioned the merits of the blanket transposition of 'court-like' models of FTPPs to all professions, through an exploration of the concept of procedural fairness and one particular profession, social work. Demands for procedural fairness are usually seen to require 'court-like' processes where career threatening sanctions are at stake, but this paper has argued that procedural fairness is a context dependent concept, and FTPP design should be sensitive to its environmental context. Further, without the financial and institutional support structures to safeguard the interests of the registrant and the profession, the blanket application of the 'court-like' FTPP represents a thin provision of procedural fairness that risks undermining the long-term integrity of the process.

This paper has additionally argued that if we are to take the broader goals of procedural fairness seriously in contexts such as social work, then subtle revisions to the FTPP design should be contemplated to support registrants and enhance the connectivity of the FTPP with the social work profession. Current Government policy is to place a greater emphasis upon the inquisitorial work conducted at the pre-hearing stages in order to settle sanctions through the voluntarily cooperation of the registrant and reduce the need for full hearings. The major objection to such a solution is the fundamental need to

[138]N Creutzfeldt and B Bradford 'Dispute resolution outside of courts: procedural justice and decision acceptance among users of ombuds services in the UK' (2016) 50(4) Law and Society Review 985.

https://doi.org/10.1017/lst.2018.42 Published online by Cambridge University Press

retain public confidence in the level of public protection being provided for. But here gains could be achieved through an enhanced willingness of professional regulators to use FTPPs to highlight institutional failings that give rise to individual failings. The concern must be, however, that absent an investment in working with investigated registrants and a renewed focus on learning institutional lessons from FTPP cases, the social work FTPP will continue to offer only thin procedural fairness.

Cite this article: Kirkham R, Leigh J, McLaughlin K, Worsley A (2019). The procedural fairness limitations of fitness to practise hearings: a case study into social work. *Legal Studies* **39**, 339–357. https://doi.org/10.1017/lst.2018.42

Education and Training regulation for Social Work England

Options Report

Professor Aidan Worsley

October 2019

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Executive Summary

1. This report is produced following the authors secondment into the Social Work England Implementation Team (0.4 from May to October 2018) and aims broadly to contextualise and provide policy options for Social Work England (SWE) with regard to Education and Training. Sections 1 to 8 provide background detail that informs the policy options reported in later sections.
2. Sections 1 and 2 of this report outline the brief, it's scope and some methodological approaches taken in the gathering of information to support observations and recommendations.
3. Section 3 of this report provides an overview of the Higher Education sector in general and observes a rapidly changing policy space. Issues relating to the quality of the data typically gathered within the sector (and its providers) are considered. This leads in to Section 4 of the report which looks at the most recent policy reviews around social work education. Specifically considering the Narey and Croisdale-Appleby reports, their shared perspectives are identified that lead directly into the policy options presented later in the report. Section 5 briefly notes some related developments in the sector such as Teaching Partnerships, the Professional Capabilities Framework and the Knowledge and Skills Statements.
4. One element of the brief was the delivery of 'Pre-consultation' workshops. Section 6 reports on a sequence of such events around the country and provides an overview of the feedback gathered on the 'view from the sector' of academics, practitioners and service users regarding education and training standards, defining and examining which issues they feel most strongly about.
5. Sections 7 and 8 provide an overview of data relevant to the work of SWE. Data is considered on social work qualifying numbers, their demographics make-up, regional supply issues, employability, supply and demand. It recommends that SWE takes steps, working with Skills for Care Intelligence team and other to develop a workforce planning approach to inform its work. Looking in detail at HCPC figures, estimates are made regarding the workload SWE might anticipate from Education & Training related regulatory activity moving forward. A significant 'unknown' is identified with the incoming Social Work Degree Apprenticeships.
6. Section 9 moves firmly into policy options and examines timeline issues for transitional arrangements between HCPC and SWE. Recommendations are made regarding the handling of the SETs and SOPs. Comparisons are made with other regulatory bodies experience of transition and reference is made to the 'rules' required at 'go live'. Key legal advice received during this information gathering is referenced. A strong recommendation is made regarding a 'lift and shift' approach for educational and training standards to appropriately reflect HEI lead in times, minimise disruption and afford greater scope for a fundamental review leading to collectively owned, new standards. A recommendation of consecutive consultations is made to handle this transition. There are already significant time pressures in the

timelines leading to the publication of 'new' standards in time for implementation in approvals for the academic year 2020-21.

7. Section 10 looks at the existing HCPC Standards for Education and Training and takes cognisance of the evidence gathered, including the pre-consultation workshops, to provide a range of policy options within the five key areas of the SETs. This provides SWE with a starting point for the consultation content in this regulatory area.
8. Section 11 moves into the practical delivery of a process of approval. Drawing on evidence and consideration of a number of sister regulatory bodies, the report suggests how might it work, who might do it – and makes some early observations regarding Inspectors workload, staffing requirements and training needs. A strong recommendation is made to move away from 'indefinite' approval to a quinquennial process. This is translated into a basic 7-year plan for the delivery of an approval process.
9. Finally, Section 12 steps back from the practicalities of transition and delivery to consider broader issues of vision. This is first examined at a level of Education & Training, offering initial thoughts on the type of content and phrasing of its key areas. It then takes this potential vision and integrates the policy drivers noted to provide some short, medium and long term options and goals for Social Work England.
10. This report needs to be considered in cognisance of what is fully understood to be a much broader regulatory set of tasks and functions (beyond Education & Training) held by Social Work England, whose Board will need to consider similar parallel reports across its full remit and determine priorities and preferences.

1. Introduction

1.1. Subject

This report sets out a range of information providing background detail and focussed options for the Social Work England Board to support their decisions in developing approaches to the regulation of social work education at qualifying level in England and managing the transition of these functions from the HCPC effectively.

1.2. Aim and Purpose

The aim is to develop informed options for SWE to set and implement Standards for Education and Training and develop an effective process for the purpose of approval of qualifying training courses to high standards.

1.3. Benefit

The effective regulation of qualifying provision offers a sector level method of defining and promoting quality improvements in the social work profession.

1.4. Brief Background

This report is based on work commissioned by the DfE for completion during a six month, two days a week (0.4) secondment of the author in to the Social Work England Implementation Team. During the secondment the author was home based.

2. Methodology

2.1. This section will briefly outline the scope of the report as agreed at the point of commission. There are five key tasks which will be covered

- Review recommendations from national reports
- Review and determine requirements on HEIs and other providers
- Review data on impact of regulatory changes for SWE
- Through engagement determine best practice and timeframe and process for consultation on SETs and Course Approval.
- Report produced for SWE by deadline

2.2. This report benefits from a range of methods of knowledge generation including extensive desk based research, a systematic gathering of relevant reports from the general knowledge sectors of social work education and regulation (these are all referenced in footnotes throughout the report). This evidence is primarily what is known as ‘grey literature’ i.e. unpublished or more commonly published in a non-commercial form and is distinct from e.g. academic publishing in peer reviewed

journals (although there is some use of that source). Inevitably, web-based sources are used heavily as much of the regulatory apparatus has a strong and well-established on-line presence. Where helpful, footnotes provide links to key web sites and documents. Personal conversations and communications are not commonly referenced unless germane to the advice. Broader engagement methods rely primarily on a sequence of 'pre-consultation' workshops organised in July 2019 across the country drawing in a wide range of academic and practitioners – with some service user involvement. Data presented from these sessions is all anonymous and aggregated, ensuring confidentiality for participants. This data is discussed in more detail in Section 6.

2.3. There are, inevitably, some areas that have fallen outside the remit of this work, which are as follows

- Approved Mental Health Practitioner and Best Interest Assessor training and related issues of annotation and register.
- Assessed and Supported Year in Employment, Newly Qualified Social Worker and the related National Assessment and Accreditation Scheme which is currently in trial phases in five Local Authorities (Children and Young People teams)
- Practice Educator Standards (PEPs) are not formally held anywhere following The College of Social Work closure. They are referred to in as much as they therefore link to qualifying education and, importantly, are in general current use.
- Knowledge and Skills Statements (KSS) which exist to inform desired outcomes at end of the first year in professional practice. These are referred to in as much as they therefore link to qualifying education.
- Development of a Post Qualifying framework 'map' or similar.

3. The Higher Education Sector

Current policy developments and data sources in Higher Education – a brief synopsis

3.1. The Higher Education sector is undergoing a significant period of policy and regulatory change. The newly established Office for Students (OfS) is an independent public body (which reports to parliament through the DfE) and has a regulatory function at University level. The OfS was established by the Higher Education and Research Act 2017, becoming a legal entity on 1/1/18 and the sector regulator 1/4/18. Its main functions are related to widening participation in quality learning environments that result in qualifications which enhance employment and other positive outcomes[1].

[1] https://www.officeforstudents.org.uk/

3.2. The OfS houses the Teaching Excellence Framework[2], a data led, quality framework for delineating under-graduate provision at Higher Education Institutions as Gold (outstanding), Sliver (high quality) or Bronze (satisfactory). It is a voluntary scheme, awarded at Institutional level but with near complete sector adoption. The data sources are primarily the National Student Survey (NSS), Higher Education Statistics Agency (HESA) and the Destination of Leavers from Higher Education (DLHE) survey. **It is intended that the TEF moves to award at Subject level from 2020**.

3.3. It is worth noting that 'subject' level has a particular meaning in the HE sector and especially with regard to data. An illustrative example would be that most 'league table' types of HE data use the Joint Academic Coding System ('JACS') codes to group similar subject areas together. Thus, if one examines this year's NSS data, the highest performing 'Social Work' provision in a University is Bolton University – which doesn't actually have a qualifying/ regulated social work course but has a range of youth and community work provision. Course level data is, of course, available but not typically used in these aggregates. This detail is provided to illustrate some technical issues in e.g. risk based regulator activity relying on typical data sets. These issues are surmountable but not as transparent or publically visible as broader data sets.

3.4. 'Subject' data is most highly visible in the league tables that exist at national level. There are three major tables: The Times, The Guardian and the Complete University Guide. They each have slightly different methodologies and emphasise different areas (e.g. the Times emphasises research performance and the Guardian student experience). The other point to note is that because of various data lags, the basis of the data is usually 18 months old by the point of publication of the league table[3]. JACS code clusters inform subject league table data as noted and therefore when we look at 'social work' league tables we have to understand them as including but not limited to representations of qualifying social work courses. In this sense they are indicative rather than directly informative of the 'state' of social work education.

3.5. The Quality Assurance Agency (QAA) is a long-standing independent organisation which has come to a recent arrangement with the OfS that it will provide, for the OfS, its quality and standards assessment functions with effect from 1/4/18. The QAA are to engage in consultation on its methodology shortly and clarity on its previous functions are still emerging. The QAA produced Benchmarking Statements at subject level (notably Social Work[4] which was recently reviewed in October 2016 and referenced in the SWE consultation document). **These are important for Social Work England to reference in its Education and Training Standards as they provide the fullest, detailed guidance on curriculum content for HEIs**. Furthermore, HEIs subject to assessment by QAA processes will be expected to abide by the benchmarking statements.

[2] https://www.officeforstudents.org.uk/advice-and-guidance/teaching/what-is-the-tef/
[3] https://www.hepi.ac.uk/2018/01/04/new-guide-explains-mysteries-university-rankings/
[4] https://www.qaa.ac.uk/quality-code/subject-benchmark-statements

3.6. A not dissimilar issue arises with the Professional Capabilities Framework (PCF) and other guidance such as the Knowledge and Skills Statements discussed below – both one might anticipate would be referenced by SWE in its guidance around curriculum content.

3.7. The QAA have also developed the Framework for Higher Education Qualifications (FHEQ) which lists generic learning outcomes at different academic levels and, as its name suggests provides a framework that shapes *all* HE provision in the UK and would also be a key reference point for SWE. The FHEQ was referenced in the SWE Consultation document.

3.8. The Higher Education Funding Council (HEFCE) provided sector funding and data but closed in April 2018, aligned with the introduction of the OfS. Most of its functions move to the OfS – most notably around data generation on the sector. Its research functions move to another new body, 'Research England'. HESA was set up to provide data needs to the HE sector under an agreement between the (then) funding councils, HEI providers and government departments and is an important provider of 'official' statistics. **HESA will be a key reference point for SWE for subject data.**

3.9. The National Student Survey reports on undergraduate satisfaction levels and has been in operation since 2005. The NSS survey only final year undergraduate students i.e. not post-graduate students. The NSS has an extremely high profile in the sector but there is a relatively limited evidence base for the (apparently small) influence it has on prospective students[5]. What evidence there is suggests its key influence is on the subject league tables (where it is a major component).

3.10. The Competition and Marketing Authority is a non-ministerial department that aims to protect and promote consumer's rights. Its recent influence on the HE sector is considerable, most noticeably around its role in ensuring universities comply with consumer protection law or face substantial fines. In practice this ensures universities are clear about course content, fees, other costs and relevant rules and regulations *at the point of offer*. These form part of an 'offer' as contract with the students - that must not be changed. For SWE, one of the issues here is that this builds in slower change timescales for university courses. Thus, as universities begin in September 18, to recruit for September 19, they will already have committed to a format of delivery from Spring 2018[6]. **SWE will need to operate in a way that demonstrates cognisance of the restrictions the CMA legislation imposes.**

3.11. Data on retention, attainment and employability are key for Social Work England as they, together with other sources, identify important elements of the provision it will be regulating. All social work provision will have this data at course level. Retention refers specifically to the ability of a student to complete a

[5] Stephen Gibbons, Eric Neumayer, Ri chard Perkins, Student satisfaction, league tables and university applications: Evidence from Britain, Economics of Education Review, Volume 48, 2015, Pages 148-164, ISSN 0272-7757,https://doi.org/10.1016/j.econedurev.2015.07.002. (http://www.sciencedirect.com/science/article/pii/S0272775715000862)

[6] https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers

programme within a specified time frame, normally three years for an UG degree. Whilst retention is a useful proxy for the quality of the programme, it can be a double edged sword in the sense that, for example, a weak programme may pass all its students and have a high retention rate. Conversely, a strong programme may fail its weak students and have a low retention rate. Data also exists on attainment, normally understood as the classification of degree with which the student exits their programme of study. Some league tables use 'value added' measures which attempts to capture the movement from entry tariff to classification. This measure tries to realign the dangers of equating a 'high in-high out' out measures which favours high tariff entry provision. Finally, employability is measured using the DLHE survey of 'outcomes' six months after completion of undergraduate study. The DLHE is housed with the OfS and looks at different levels and types of 'employability' – graduate level professions for example, as well as further study. The DLHE survey becomes the 'Graduate Outcomes Survey' from December 2018.

3.12. The current system of student tuition fee loans and maintenance loans has led to a profound difference in the 'exit' point of students from their university degree. Most UG programmes will operate with fees of £9250 per annum. Most students will exit with debts of between £50K and £57K – with the poorer students more in debt due to their need to borrow more on maintenance. Relating directly to social work students who have completed 'traditional' university degrees, with starting salaries (outside of London) of around £25K this also exposes them to (up to) 3% interest rates. £25K per annum is the current threshold where debts begin to be repaid. Post Graduate loans were introduced in the academic year 2016/17. Other financial elements of social work education include the Student Bursary scheme[7]. This scheme uses the last three years of recruitment data to provide 'capped' numbers of bursaries to students. Students may or may not get a bursary if they are on a social work course. Some programmes recruit to bursary numbers. Some programmes 'vire' bursaries from UG to PG numbers to take cognisance of the additional debt PG students have already occurred. The current UG bursary is £3,362.50. **The scheme is administered by the NHS Business Services Authority and it is recommended that SWE engages with the NHSBSA around workforce planning**.

3.13. Considering Post Graduates students, there is a wider variation in fees set for PG courses (UG is much more standard) ranging typically from £5.5K up to £9.5K per annum. Thus, students on PG routes through social work qualification will normally carry their UG debt and then additionally incur PG tuition fee and maintenance loans debt. It ought to be noted that government funded 'fast track' schemes offer a very different financial 'exit' point for students. For example, a student on the Frontline programme not only has their tuition fees paid but also are given a bursary of £16.5K per annum for maintenance and other costs[8]. Frontline students will likely carry UG tuition fee loan debts, of course.

[7] https://www.nhsbsa.nhs.uk/social-work-students

[8] https://thefrontline.org.uk/wp-content/uploads/2018/09/Frontline-Brochure-2018–17.pdf

3.14. The main point to draw from this synopsis is that the sector is going through a significant period of change. Due to large shifts in the demographic make-up of the population, the HEI sector has been recruiting from a smaller pool of 18 year olds for the last few years – and will continue to do so for two more years. This has increased the competition within the sector at the same time as the policy changes are impacting. SWE is advised to be aware of these dynamics in pursuance of its regulatory objectives. The policy reviews we shall now consider were produced before the current landscape was formed.

4. Social work education policy reviews

4.1. There are four key documents that provide national policy positions (and data analysis) regarding social work education since 2014. The Narey[9] and Croisdale-Appleby [10] reports provide the most recent policy review guidance – both published in February 2014[11]. With the Education Committee report[12] following on in 2016 and the Skills for Care report on Social Work Education in 2017[13]

4.2. Professor Croisdale-Appleby's review was commissioned by Liberal Democrat MP Norman Lamb in the Department of Health, with tone intent on up-grading the quality and professionalism of social work through education; recognising the practitioner, the professional and the social scientist as part of the social work role. He sees social work education as: 'an extraordinarily complex subject because it draws upon a wide range of other academic disciplines, and synthesises from those disciplines its own chosen set of beliefs, precepts, ideologies, doctrine and authority' (p.15). Using his scientific background and independence as Chair of Skills for Care he approaches the task using explicit methodology, moving from open-ended interviews to focussed questionnaires, widening his scope to incorporate service users, stakeholders at all levels as well as an international dimension to data gathered. Croisdale-Appleby asserts that social work education in this country is 'no longer world leading' (pp.80) and concludes with focussed recommendations for improvement.

4.3. Sir Martin Narey, previously associated with his work in the prison service and at Barnardos, produces his own 'report' rather than an enquiry. Then employed as a government adviser to Michael Gove, his report is based on undisclosed interviews and consultations, citing anecdotes from interested parties who are largely unnamed. Narey's emphasis is on the production of technically competent workers and his report is arguably more based on opinion and judgement than generalisable

[9] https://www.gov.uk/government/news/sir-martin-narey-overhauling-childrens-social-work-training
[10] https://www.gov.uk/government/publications/social-work-education-review
[11] Thank you to Theresa Clearly of Anglia Ruskin University, whose research into these areas, I draw on with permission
[12] https://publications.parliament.uk/pa/cm201617/cmselect/cmeduc/201/20102.htm
[13] https://www.skillsforcare.org.uk/NMDS-SC-intelligence/Workforce-intelligence/publications/Topics/Social-work.aspx

fact. That said, I have taken the view that the reports are equally important and should contribute equally to a view of policy steer.

4.4. The reports are very different with different emphasis and conclusions, but there are core common threads which appear in the two documents – and which I will return as THE key policy driver elements of a vision for the future work of Social Work England:

- *Social work education in England should be guided and overseen by a single regulatory body.*
- *Clear curriculum content expectations and more rigorous course endorsement processes should be introduced.*
- *Admissions criteria for entry-level courses should be raised.*
- *Academic standards and course pass levels should be reviewed.*
- *Better national workforce planning should take place with fewer students graduating*.

4.5. Significant differences include Narey's challenge to the theoretical emphasis of social work training, his questioning of the commitment to social justice embedded in the definition of social work and his strong endorsement of fast-track or employment based routes of qualification. Narey also gives a strong steer towards allowing students to specialise at first degree level particularly in children's work calling for more emphasis on the tools to do the job in terms of direct knowledge.

4.6. Croisdale-Appleby drew attention to the fact that 42% of all social work graduates are now at masters level (although latest figures discussed below suggest this is 35% para 7.2), that many universities no longer offer undergraduate courses and that questions need to be raised in relation to alternative routes of qualification to ensure that they 'equip students for a career and not just a job in social work' (p.33) and that they additionally comply with the Bologna Accord (EU 1999). He calls for all educators to be trained in teaching, for more emphasis on interdisciplinary learning and appears to raise concern that social work education in the UK does not have the same academic focus as many other countries. Finally, he strongly recommends that entry level education remains generic.

4.7. The Education Committee report (2016[14]) into social work reform was published in July 2016 after consultation with professional and academic bodies through written submission and public scrutiny panels. The tone of the report is measured with one section dedicated to the issue of social work education and reaching the following conclusions regarding what is referred to as initial training:

- That the initial social work qualification remains generic in content embracing preparation to work with both children and adult client groups.
- That long term research is commissioned to examine the outcomes of Frontline, which is work-based post graduate training commissioned by the government and run by a private company targeting students with a high performing academic background.

[14] https://publications.parliament.uk/pa/cm201617/cmselect/cmeduc/201/20102.htm

- That Frontline work closely alongside universities and the Joint University Council for Social Work Education Committee (JUCSWEC).

4.8. A final report worthy of mention in this review is the 'Skills for Care' Report on Social Work Education in England produced by the Department of Health in 2016 (Skills for Care 2016). This report summarises some statistical data from the academic year 2013 -14. The trends identified indicate numbers slightly falling on undergraduate courses with post graduate numbers remaining more constant. The report also identifies a trend towards more students under the age of 24, 85% of students being female, and 70% described as white. Around 6.5% of enrolled students failed to qualify, most of whom dropped out during their first year and were more likely to be from a younger age group with older post graduate students most likely to complete successfully. At least 65% of qualifying students took up social work posts within six months and this figure appears to be rising with more than 3000 new social workers entering the profession in 2014. Despite the debate and the apparent criticism social work remains a popular discipline within universities and employers are taking-on university graduates. The figures relate well compared to general university provision and are discussed in detail below in Section7.

5. Other Developments relevant to Social Work England

5.1. Teaching Partnerships[15] are a DfE & DHSC promoted funding stream to improve quality at UG/PG level – emphasizing local employer led partnerships, statutory placement experience and high tariff entry. The funding stream is set to end in March 2019 for all but the new partnerships (i.e. those launching in summer 2018). The newly funded partnerships are funded through for 24 months. These partnerships currently involve 108 universities and a range of other public sector and PVI organizations. Given the withdrawal of the funding, the sustainability of this major initiative is unclear. To achieve Teaching Partnership status, bids must provide evidence against 'basic' and 'stretch' criteria which cover what might be termed the 'regulatory space', touching on, for example, tariff entry, guaranteed statutory placements and the embedding of Knowledge and Skills Statements. Teaching Partnerships now account for around 50% of the qualifying provision and all are, at least, meeting basic criteria. I have not been able to access the range of successful applications and current evaluative data on Teaching Partnerships.

5.2. The Professional Capabilities Framework[16] is an outcomes focussed competency map of social work skills at different social work levels (including qualifying) . originally designed under The College of Social Work banner, this is now held by BASW. The PCF informs the assessment of almost all qualifying students – and post qualifying learning – and has taken a strong underpinning position in the sector and

[15] https://www.gov.uk/government/publications/social-work-teaching-partnerships-programme-pilots-evaluation

[16] https://www.basw.co.uk/professional-development/professional-capabilities-framework-pcf

profession. It was reviewed in 2018. In March 2018, BASW and both Chief Social Workers issued a joint statement[17] noting that, 'together the PCF and the KSS provide the foundation for social work education and practice in England at qualifying and post qualifying levels'. **This agreement has implications for Social Work England.**

5.3. The Knowledge and Skills Statements (KSS) are largely 'output' standards which set out the expectations of a newly qualified social worker at the end of their first year in practice. They exist for Children's roles[18], and Adults[19]. They provide the criteria against which the new National Assessment and Accreditation programme will assess. In this sense the KSS' are 'outwith' the scope of this report. It is worth noting that one of the Teaching Partnership criteria was the integration of the KSS in the qualifying curriculum.

5.4. However, Social Work England will be engaging with both these structures in setting standards for qualifying social work education. Programmes will currently be mapped against the PCF - and the KSS, albeit set at a post-qualifying level, will by their very nature, inform the curriculum of qualifying provision which needs to provide a point of trajectory for graduates as they enter their Assessed and Supported Year in Employment.

5.5. **Social Work England will need to take a view on how it relates to three key curriculum and competency frameworks**, namely the QAA Benchmarking statements, the PCF and the KSS. The simplest solution will be to acknowledge the existence of these documents and expect programme curricula to take account of them. This does effectively endorse a complicated and unpopular 'guidance fatigue' feeling in social work programmes which was strongly evidenced in the pre-consultation processes I engaged in for this report (see para. 6.3). However, my recommendation would be to acknowledge this and set integration out as a future action.

6. Pre- Consultation Workshops – stakeholder feedback

6.1. This section briefly outlines the outcomes of the four pre-consultation workshops the author ran in the summer of 2018 on Education and Training Standards. These events took place at Manchester Metropolitan University, University of East London, University of Birmingham and Coventry City Local Authority on the 19,20,25 and 26th July 2018 respectively.

[17] https://www.basw.co.uk/professional-development/professional-capabilities-framework-pcf

[18] https://www.gov.uk/government/publications/knowledge-and-skills-statements-for-child-and-family-social-work

[19] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwibptDwg8zdAhXpKsAKHaUJA-4QFjAAegQICxAC&url=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F411957%2FKSS.pdf&usg=AOvVaw0Rs3ODUuNn0cPyUPDx0ov7

6.2. Looking across all four events, they attracted just over 100 participants, with broadly a 50/50 split between academic and practitioners. Services users were present in three of the workshops but in very low numbers. Participants were provided with a feedback format based around the existing HCPC Standards for Education and Training and asked to comment on the topic areas – as well as on more general observations. These feedback forms were then aggregated (by common theme) to establish a broad overview for Social Work England. The themed feedback was then delineated in terms of frequency of occurrence to enable SWE to examine the most common concerns and observations from these stakeholders. The reporting below is done in descending order, with each paragraph describing themed feedback from the most commonly expressed views (reaching just under 50% of views) downwards. Paragraphs 6.3 to 6.11 will outline the 8 most commonly expressed views – with 6.3 representing the most commonly expressed and 6.11 outlining the eighth most commonly expressed view.

6.3. The single most common view expressed was with regard to the need to integrate what was seen as a confusing array of standards, requirements and guidance – i.e. QAA, PCF, KSS and, of course, HCPC SETs and SOPs – all on top of interval validation procedures and processes. This is currently addressed in regulatory approval processes by a dizzying array of mapping grids that struggle to attain meaning in the authors experience (both as their author – and as an assessor of them within a regulatory role).

6.4. Attendance was a surprisingly common element of feedback with many participants feeling the regulator should place a greater emphasis on student's physical engagement with the programme. It was acknowledged this is problematic in blended learning environments. There was some discussion on the parallel issue of timely completion and over what time period a social work student could complete their studies. Current typical academic regulations allow part time degrees to be completed over six or seven years. If one adds in e.g. a period of illness this can mean that at the point of qualification, the Law module a student may have taken in their first year – is eight years out of date.

6.5. There was strong support for service user involvement in all elements of social work education. **Similarly, strong approval was for higher English Language level requirements at point of entry**. The HCPC currently adopt a level of IELTS 7 (or equivalent) with Speech and Language Therapist the only HCPC regulated profession at IELTS 8. The highest IELTS band is 9. Oral English was also felt to be a relatively significant issue by participants. Interestingly only one person suggested stronger maths requirements at admission.

6.6. The retention of genericism at qualifying level was the next highest issue finding common ground. This was a contrasting feature of the Narey and Croisdale-Appleby reports – but on this evidence there was a large measure of shared view that genericism at qualifying level was the most appropriate. It is interesting to note comments in para. 6.9 about flexibility and how 'pathways' rather than 'specialisms' might be a useful way forward.

6.7. Further to 6.3 was the need to review the Practice Educator Professional Standards (PEPs) and enhance or elevate the role of practice educators in qualifying education. PEPs are a product of The College of Social Work but, to the best of my knowledge, are not currently adopted formally by any related structure – whilst still being used fairly standardly across the sector[20]. **Given the central importance of placement learning opportunities in social work education this is an issue that SWE needs to work with others to rectify.**

6.8. In all the pre- consultation workshops I suggested the idea of a 'Lead Social Worker', building on the Lead Midwife idea used by the NMC[21]. Lead Midwives have a leadership quality role and are based in (and employed by) the host educational institution. They have elements of their role that focus on development, delivery and management of programmes. The HCPC has a 'named contact' but the NMC role is significantly more developed and provides an interesting (and apparently popular) development option for SWE.

6.9. Participants felt strongly that programmes should be allowed flexibility to introduce innovative provision. There was generally (especially amongst practitioner participants) some surprise that the 'typical' placement structure was not a HCPC requirement- but rather a remnant of GSCC and TCSW structures and custom and practice. Some concerns were expressed about 'losing' placement days – but, as can be seen, there was strong support for flexibility in design.

6.10. The next most common feedback was around workforce planning. Most participant's feedback understood this to be a better connection between programme intakes and employer workforce demands. HCPC does not typically approve at given recruitment levels, but SWE may well wish to consider this.

6.11. In this 'top tier' of themed feedback, the last entry is around student registration. The GSCC had a system of student registration which was lost in the move to the HCPC. Most regulators do not have a process for student registration. The HCPC developed a Social Work Student Suitability Scheme during the transitional period as it assumed regulatory oversight of the sector[22]. The Law Commission review[23] on the Regulation of Health and Social Care Professionals examines the issue of student registration and notes social work's responses in this area. SWE has powers to set this up if it so chooses.

6.12. After this tier of feedback there were only two areas of feedback that rose above isolated comments: oral English and tariff flexibility. The former I have touched on above in para 6.5, the latter reflects considerable agreement that the use of regulated tariff entry points was to be avoided for reasons expressed above. Their use is problematized by Degree Apprenticeships, but is clearly a criteria employed by Teaching Partnerships. High tariff points are a generally accepted proxy for quality of student intake. Reflecting more generally, though rarely expressed in these terms, the tariff debate related primarily, for the participants, to

[20] https://www.basw.co.uk/resources/practice-educator-professional-standards-social-work
[21] https://www.nmc.org.uk/education/lead-midwifery-educators/the-role-of-lead-midwives-for-education/
[22] http://www.hcpc-uk.co.uk/publications/index.asp?id=1000#publicationSearchResults
[23] https://www.lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/

the importance of 'widening participation'. The general view was the routes into social work needed to maintain a pathway for all prospective social workers from an array of backgrounds. The development of Degree Apprenticeships is social work was seen as a helpful development in this context – but concern was expressed at them becoming a 'second-class' qualification.

6.13. Finally, in this section, we will note some of the issues that were expressed but DID NOT meet a reasonable bar of consensus and, most commonly were expressed by less than a handful of the participants. The issues not receiving support include:

- Greater use of APEL in the admissions process (Accreditation of Prior Experience and Learning) – how universities take account of existing qualification – and most pertinent in social work education, the value of previous experience. APEL 'discounts' parts of programmes by determining, for example, that x years' experience could fulfil the requirements of a first placement. The social work HEI sector generally, it is noted, do not APEL placement days.
- A requirement to have academic staff on the Register. Whilst not apparently a popular view, SWE could follow this path and determine regulation in this area, being aware of the academic as qualified social worker who's input on e.g. qualifying training was negligible. Similarly, 'practice days' for academic staff were mentioned by two respondents.
- Staff student ratios were discussed at all workshops – but were not a popular issue, perhaps surprisingly. Midwives approve at set SSRs, but this would be a challenging area for SWE as it makes resource demands on HEIs
- Perhaps surprisingly a 'new' definition for statutory placements was only mentioned once. This might suggest that the definition used by Teaching Partnerships has gained acceptance. Similarly, there was only one person who suggested a requirement that all students have a minimum of one statutory placement. As above, this may also be linked to an awareness of the resource demands on Local Authorities.

7. A Brief Presentation of Data on Social Work Education and the Social Work workforce relevant to SWE

7.1. Skills for Care have produced two reports on Social Work education that provide useful summaries of data and trends applicable to that sector which will be relevant to SWE. The most recent of these 'Social Work Education'[24] was published in January 2018 and employs HESA data (see para.3.8). The report therefore excludes

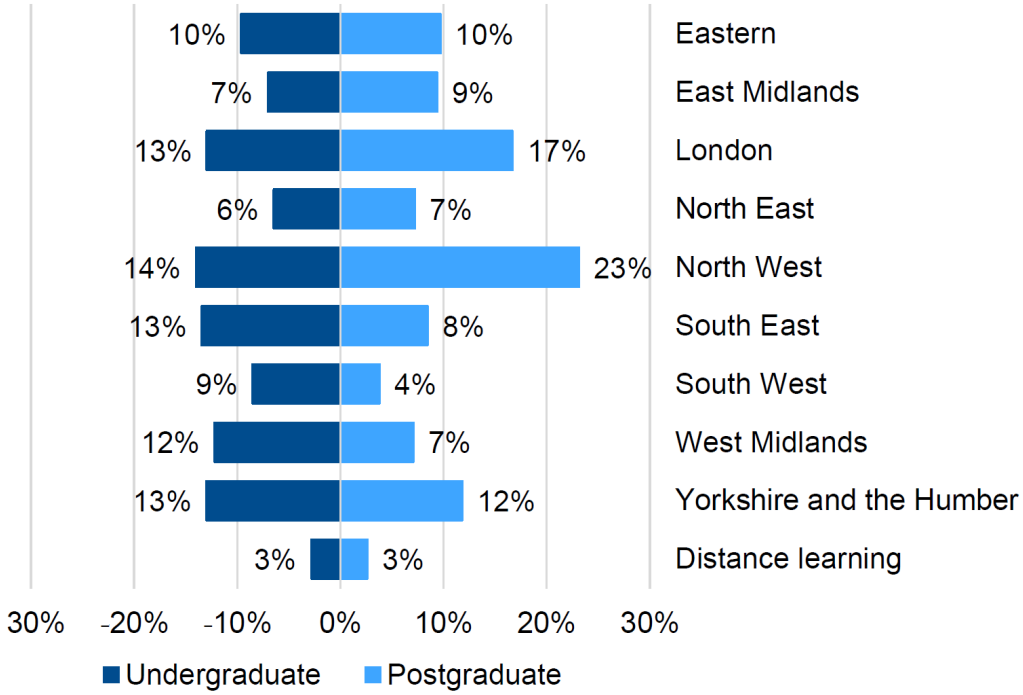
[24] https://www.skillsforcare.org.uk/NMDS-SC-intelligence/Workforce-intelligence/publications/Topics/Social-work.aspx

Further Education provision of social work and, in reality this means that of the 78 HEIs providing social work education, the data extracted relates to 68 of those.

7.2. Around 4,590 students enrolled on social work courses in 2015/16 which led to eligibility to register with the HCPC. This is a figure that has remained relatively steady for two years, following the third year previously when a drop of around 1000 students occurred. The balance between UG and PG numbers has shifted in recent years with PG share taking a fall (in 2012-14) before becoming a greater share of the overall numbers of social work graduates (now at 35%). This shift is, of course, fuelled predominantly by the growth of PG routes such as Frontline, Step-Up and Think-Ahead but also by the introduction of PG Loans. Thus, steady overall numbers of enrolments, mask a decrease in UG enrolments and a 14% increase in PG enrolments.

7.3. This diagram from the Skills for Care report provides a helpful overview of the regional spread of UG and PG courses

Chart 2. Home region of social work students enrolling in 2015/16.

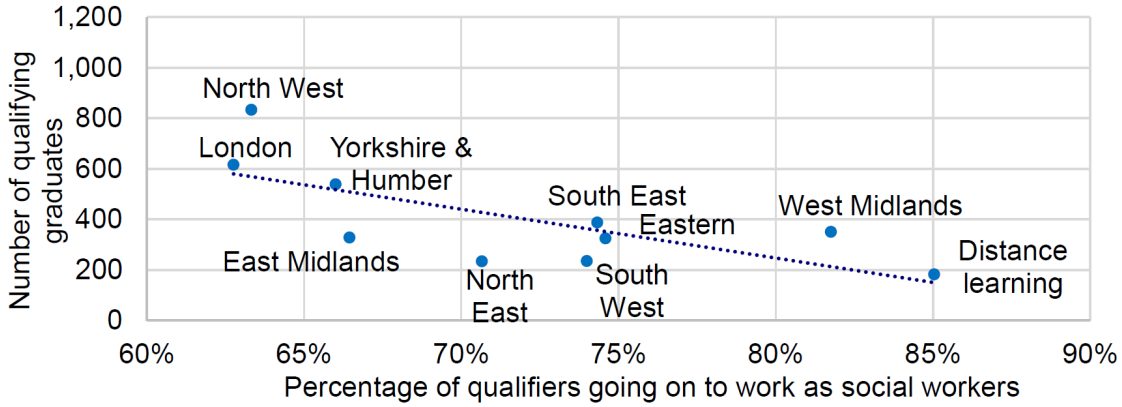


- Whilst the UG spread is relatively consistent across several regions, the PG spread is much more diffuse – with the North West providing 23% of the countries PG enrolments. There are a number of large providers in this region – including Salford, MMU, UCLan and Lancaster. It is impossible to discern from this data but it may be skewed a little by the inclusion of Step Up enrolments with MMU.

7.4. Skills for Care also extract DLHE data on destinations or 'employability'

Chart 11. Percentage of social work graduates working as social workers six months after graduation by HEI region, 2015/16

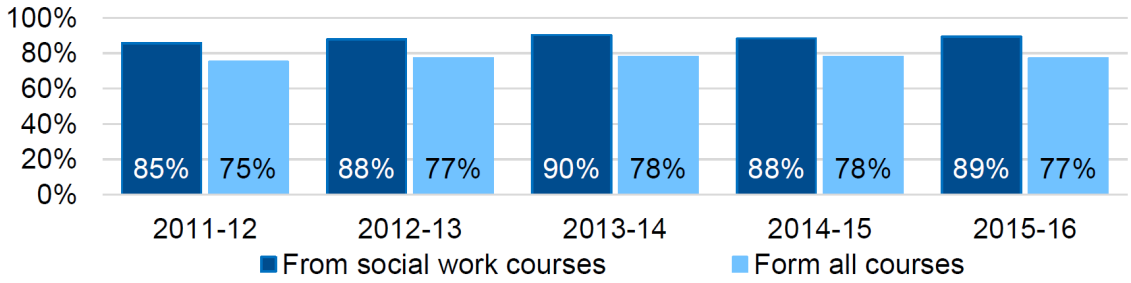
Source: HESA student record and destination of leavers from Higher Education Survey



- This graph supports a view that there are regional factors affecting the correlation between recruitment and employability – related to the first six months after graduation and 'social work' roles. But the situation merits further examination, not least as it appears to not include PG student destinations.
- It ought to be noted that social work courses in higher education generally produce highly employable graduates, considerably in excess of other cognate disciplines

Chart 12. Comparison of employment between social worker and all higher education graduates, 2011/12 to 2015/16

Source: HESA student record and destination of leavers from Higher Education Survey



- Thus for Social Work programmes, 89% of graduates find employment with 69% of these as social workers – up from 56% in 2011/12. A further 16% find employment in health and social care related roles (down from 23% in 2011/12) and 4% in non-social care related roles – again falling – as is the number of those not working (or in an 'unclassified' role). This presents evidence of strong positive trends in qualifying training overall.

7.5. In terms of basic demographic data the social work student workforce has notable characteristics that distinguish it from other student populations. We enjoy a higher range of ethnic diversity in social work education than other HE provision with 32% from BAME (Black, Asian & minority Ethnic) groups against 22% in all other courses. This has increased from 26% in 2011 – and suggests a throughput that will create a

more diverse workforce than currently exists. Of the 2015/16 enrolments, 3% had EU nationality and a further 9% had nationality outside of the EU/UK. Clearly Brexit could have an impact on workforce supply. 17% of the overall enrolments declared a disability (up from 13% in 20110/11). In terms of age, Social Work remains a relatively 'mature' student population with 32% of the UG enrolments being 30+ (against only 15% of the general student population). This is to be expected as social work students tend to head towards the profession (especially at UG level) from social care related experience. It is also a largely female population (86%) – and this characteristic has become more pronounced in recent years. This is against a working social work population which is 80% female – so we are heading towards even greater gender differences.

7.6. Moving into slightly different but important areas this report will now draw on unpublished internal data from some work done in the University of Central Lancashire which are included as it is helpful – but this is not for public circulation and ought not to be used in e.g. presentations. Post '92 Universities (essentially ex polytechnics) account for some 80% of social work graduates. Russell Group universities have relatively little engagement with social work education – and, indeed, professional education and training. Whilst there are significant exceptions, this suggests a gap between research intensity and professional education. This data also suggests that larger programmes (i.e. ≥ n50) are shrinking. It is unclear exactly why that may be the case, but Fast track provision, bursaries and placement availability may all contribute.

7.7. Within the arena of employment, the latest data shows that vacancy rates for social workers on the adults side was 10%, rising to 15% on the children's side[25]. As of 2017 there were an estimated 19,500 social workers on the adults side, 16,200 in Local Authorities. Around 7% of social workers on the Adults side were agency staff but this rises to 16% on the Children's side. Drawing on DfE data, there are 28,500 FTE social workers, 2% up on last year[26]. 58% of the FTE children's social workers have been in service less than five years.

7.8. Overall this creates a fairly volatile space wherein SWE, should it wish to engage in workforce planning in some way, will need to navigate carefully. The data suggests a broad picture where demand is increasing, vacancy rates are quite high and supply might not be catching up. The growth of the Social Work Degree Apprenticeship routes adds further complication and the overall picture needs to be monitored carefully. **I would recommend that SWE takes steps, perhaps working with Skills for Care Workforce Intelligence Team and DfE colleagues, to develop a workforce planning approach to inform its approval work.**

[25] https://www.skillsforcare.org.uk/NMDS-SC-intelligence/Workforce-intelligence/publications/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx

[26] https://www.gov.uk/government/statistics/childrens-social-work-workforce-2017

8. HCPC data to predict workload for Social Work England

8.1. This section of the report draws on the HCPC Annual Education report 2016/17[27] and their 2016 report on Social Work Education[28] to offer some insight into probable workload for SWE to manage moving forward.

8.2. In 2015/16 there were 253 social work qualifying programmes holding 'approved' status with the HCPC. This is across some 78 providers and the difference is accounted for by e.g. UG and PG routes, full-time, part-time and work based routes and so on. The number of programme suffered a small decline (n3) on the previous year, but had been up at 276 in 2013/14.

8.3. HCPC data reveals that the 'peak' period for open cases i.e. those embarked on the approval process is Autumn/ Winter. These will likely be courses to start being delivered the following year and possibly advertised as 'pending approval' if new. 40% of all courses going through the approval process are set between one and ten 'conditions' of approval, where the visitors feel the programme needs to address particular issues before granting approval. The average number of conditions set by the HCPC approval process is 11. The author has only been able to discover data relating specifically to Social Work approval from 2014/15 – which notes that their average number of conditions is 5. This suggests a good level of compliance and awareness of the requirements and regulatory expectations.

8.4. The HCPC finds that the average number of days for the turnaround of an approval is 108. They sensibly deploy a 'proportionate' approach, devoting additional resources to the process for more complex programmes.

8.5. The HCPC grant 'open-ended' (indefinite) approval and continue to quality assure through an Annual Monitoring process. This contracts with the GSCC which delivered a five yearly approval process. Of course, the HCPC has rules which allow it to make visits as it deems appropriate. The HCPC deals with 98% of all Annual Monitoring cases within two months.

8.6. Using data from the HCPC 2016 report we are able to extrapolate a likely annual Education and Training approval workload. There is an underlying assumption that we retain a broadly similar process to the HCPC for comparison purposes.

- Approval (an annual figure of 'new' provision approved): 23 courses approved across 14 HEIs.
- Annual Monitoring (annual QA returns checked and agreed): 194 cases
- Major Modifications (annual figure of significant changes to existing, approved provision): 111 cases
- Concerns (i.e. issue raised that reaches an investigation threshold about an approved programme): 1 or 2 cases each year.

8.7. SWE will need to take a view on transitional arrangements and how it plans to introduce new Standards for Education and Training. It is worth noting that the HCPC, in introducing new Standards (SETs and SOPs) decided to give transitional

[27] https://www.hcpc-uk.org/education/educationreports/

[28] https://www.hcpc-uk.org/publications/reports/index.asp?id=1140

approval and then 're-approve' all providers of qualifying provision over a three-year period to their standards. Thus, between 2012-15 the HCPC visited 80 HEIs. There are currently 60 different institutions subject to annual monitoring (the difference here is due to franchise arrangements where e.g. University X franchises the Social Work degree to a Further Education provider). Broadly speaking however, SWE would be looking at 27 visits to providers each year for three years if it took the same approach. It is also worth noting that the HCPC alerted all providers as to which of the three years it would be visiting them and also used criteria to prioritise and order the visits, namely:

- Existing QA data from the previous regulator (GSCC)
- Demand for practice placements within each region
- Size and frequency of student cohorts
- Entire provision within each education provider and region

It is a strong recommendation that SWE takes a broadly similar approach to transitional approval arrangements and sets out a scheme for visiting all HEIs across a three-year period. One key difference to note is that a 'lift and shift' strategy means that in Year 1 from 'go live' SWE would not have 'new' standards against which to approve and it might sensibly take the view that it would be better to begin its three year round of visiting all institutions to in Year 2. This has the added benefit of giving SWE an 'additional' year – during which it will gather experience of delivering an approval process and fine-tune training its Inspectors.

8.8. It is worth noting the OfS' approach around risk based monitoring at this stage (see para. 3.1 above) – as it suggests additional factors that might assist in a sequencing of approval visits. The OfS uses an approach of lead indicators, reportable events and other intelligence:

- Lead indicators: constructed from as near 'real time' data as possible to identify trends and afford some level of anticipation. SWE could consider data sets from UCAS (such as changes in applications, admissions, tariff etc.), HESA data (progression and attainment) and geographical differences in admission rates.
- Reportable events: separate to the above, SWE may wish to consider where issues have been raised regarding provision. The HCPC would, one assumes, have data regarding issues raised since initial approval – or (as discussed at 8.3) the numbers of conditions set at approval. There is a slightly separate issue here regarding the need for SWE to ensure its requirements include the notification of important events, changes etc.
- Other Intelligence: the OFS constructs this around student complaints and whistleblowing matters.

8.9. In concluding this section, it is important to return to the issue of Social Work Degree Apprenticeships which is relevant to the workload analysis. The SWDA is, in effect, an unknown *additiona*l workload to be anticipated in the short to medium term. SWDAs have only come into being this academic year and the very small numbers of them currently being delivered exist largely through the HCPC treating

the ‘reconfiguration’ of an existing work based route in to a SWDA – as a major modification and approved through a paper based process. However, I have not been able to access data to clearly ascertain numbers. At the time of writing there remain ongoing disputes regarding the ‘end-point assessment’ so the SWDA standards have not yet technically been fully agreed. For SWE purposes, if the SWDA becomes popular, more will be coming through for approval stimulated by an increasingly competitive environment.

9. Timelines and the options for transition from HCPC to SWE of Education and Training

9.1. This section has been challenging to write, primarily as it relies on a deeper knowledge of the process of consultation and ‘rule making’ than the author possesses. Whilst the author has strived to have detailed discussions with relevant colleagues (e.g. Caroline Mynes and Greg Ross-Sampson), this section will require sense checking with those far more knowledgeable in these areas. A key reference point are the slides produced by Caroline Mynes on the setting of Rules and, most importantly on the Consultation requirements that are attached to Rules.

9.2. The aim of this section is to examine and illustrate how SWE might set new Standards for Education & Training (SETs) from ‘go live’ and, over time, approve all qualifying programmes against those standards

9.3. The first point to make is with regard to the standards themselves. Programmes are currently approved against generic HCPC SETs[29] that apply to all their regulated provision (i.e. from Radiographers, Hearing Aid Dispensers, Paramedics and Social Workers etc.) and Standards of Proficiency (SOPs)[30] which are professionally specific.

9.4. The SETs are broken down into six areas, typically for this area of regulation: Entry, Admissions, Governance, Programme design, Practice Based Learning and Assessment. The SETs function is to provide a threshold standard to judge suitability for approval which ensure learners are ‘prepared for safe and effective practice’. A programme which meets the SETs allows a learner who completes that programme to meet the SOPs. SETs are what a course ‘must do’.

9.5. The SOPs for Social Work set out what safe and effective practice looks like in the particular profession and are the ‘threshold standards necessary to protect members of the public’. They set out what a student must know, understand and be able to do before they complete their training. There are 15 sections in the Social Work SOPs including: legal & ethical boundaries, maintenance of fitness to practice, practicing as an autonomous professional and practising in a non-discriminatory manner and so on. SOPs are what a student ‘must be able to do’.

9.6. SWE will need to take a view as to whether to adopt the model and replicate it or whether to take advantage of the opportunity to ‘unify’ the SETs and SOPs approach

[29] http://www.hcpc-uk.co.uk/education/standards/
[30] http://www.hcpc-uk.co.uk/education/standards/

into one set of standards. This would be an extremely useful issue to raise in forthcoming consultations. **Given the 'pre-consultation' workshop feedback (see para. 6.3) this unification of SETs and SOPs is a strong recommendation**. Maintenance of the existing model does afford continuity, but SWE will want to make its mark as a profession specific regulator and will need to ensure its new Standards reflect the professional milieu more directly.

9.7. SWE will also need to ensure that its new SETs, whatever shape they may take, are produced in appropriate time for the sector to adopt them and integrate them into their own, internal, approval processes. Evidence suggests this requires a minimum of 12 months following publication. The HCPC took on its regulator function in 2012 and instigated a three-year approval process for all provision against their (existing) standards from 2013, through to 2015[31]. The General Dental Council introduced its 'Preparing for Practice' document on learning outcomes for Dental programmes over a five year period[32]. The Nursing and Midwifery Council drafted new Education & Training Standards in 2016, consulted in Spring 2017, published May 2018 and plans to approve against them from January 2019[33]. **The recommendation here is clearly that programme providers need at least 12 months of published standards before they are implemented in an approval process**. This also supports the requirements around Competition and Marketing Authority requirements in terms of advertising provision. Thus, if SWE were to have new standards in place for 'go live' it would already need to have drafted them, consulted on them and responded. These would have to therefore be already published – and timeframes are challenging around getting publication for e.g. October 2019. This report generally proceeds on that assumption – but SWE may take a view that timescales re such that it extends 'lift and shift' for Education & Training for an extra year – see para 9.15.

9.8. **SWE *must* have Education & Training rules at 'go live' to operationally deal with**:

- Education and Training approval scheme, including:
    - Criteria for approval,
    - Monitoring and Re-approval,
    - Approval process,
    - Info for HEIs,
    - Decision making procedure,
    - Quality assurance process,
    - Publication of reports/ decisions and Procedure for inspection and report.

  This will include
- Transfer of currently approved programmes status
- Process of either annual (or greater) re-approval
- New provision approval process (potentially from new providers)

[31] https://www.hcpc-uk.org/publications/reports/index.asp?id=1140
[32] https://www.gdc-uk.org/professionals/education
[33] https://www.nmc.org.uk/standards-for-education-and-training/standards-framework-for-nursing-and-midwifery-education/

- Major modification approval process to existing provision
- Concerns process on registered providers
- Website requirements e.g. searchable list of approved courses

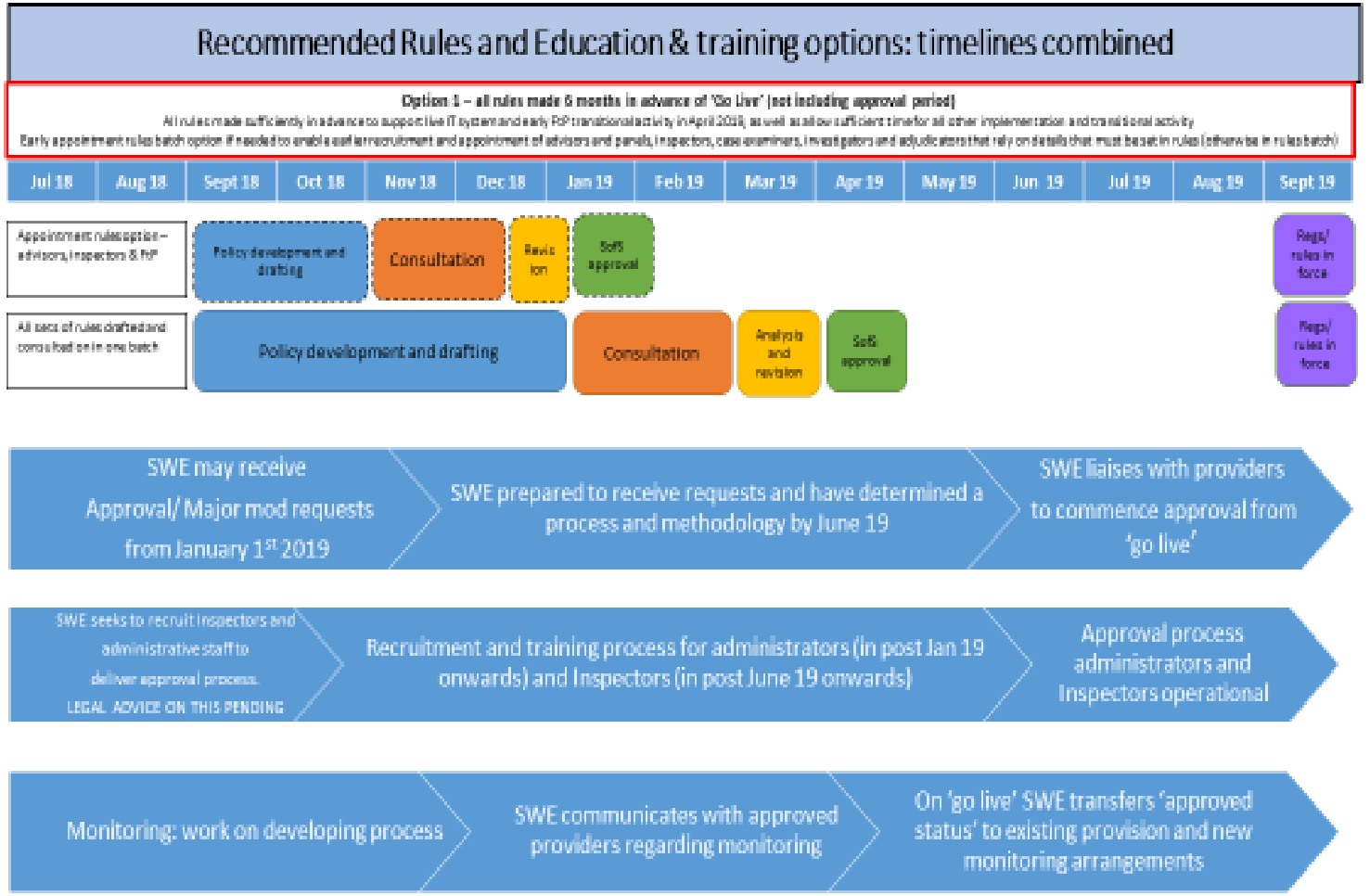
9.9. Key to determining a workable timeframe will be the understanding of two issues: at what point does the HCPC cease to accept requests for approval and deal with annual monitoring? And secondly, at what point does SWE, as a legal entity, become able to assume the regulatory function of programme approval? With regard to the former, I understand that the HCPC will cease to accept approvals from spring 2019 (perhaps 1/1/19) and Annual Monitoring from before then- but I have not been involved in these discussions nor have they been shared with me. With regard to the latter, one would perhaps assume that the processes could not start before 'go live'. Inevitably this suggests a 'gap' around programme approval. Mitigation against this risk would be to ensure that a) SWE is able to accept and plan for approval in any hiatus and b) that its Inspectors were ready from 'go live' to commence approval visits. Further to this issue, we have received legal advice[34] which states, in effect, that SWE can consult and make rules in advance of taking over the register:

9.10. Section 13 sets out:

> Where an Act which (or any provision of which) does not come into force immediately on its passing confers power to make subordinate legislation, or to make appointments, give notices, prescribe forms or do any other thing for the purposes of the Act, **then, unless the contrary intention appears, the power may be exercised, and any instrument made thereunder may be made so as to come into force, at any time after the passing of the Act so far as may be necessary or expedient for the purpose—**
>
> **(a) of bringing the Act or any provision of the Act into force; or**
>
> **(b) of giving full effect to the Act or any such provision at or after the time when it comes into force.**

9.11. Previous work submitted to the SWE CEO strongly supported a 'lift, shift & consult' strategy. This received initial/ indicative approval from SWE CEO and is taken as the foundation for the remainder of this section of the report. This submitted slide combines Caroline Myne's work on Rules with the timelines from my work on policy options for Education & Training:

[34] Correspondence 19/7/18 **Debbie Keyes**, Senior Lawyer, Children's Law Team, DfE Legal Advisers, Government Legal Department, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT


Recommended Rules and Education & training options: timelines combined
Option 1 – all rules made 6 months in advance of 'Go Live' (not including approval period)
All rules made sufficiently in advance to support live IT system and early PoP transitional activity in April 2019, as well as allow sufficient time for all other implementation and transitional activity
Early appointment rules batch option if needed to enable earlier recruitment and appointment of advisors and panels, Inspectors, case examiners, investigators and adjudicators that rely on details that must be set in rules (otherwise in rules batch)
Jul 18
Aug 18
Sept 18
Oct 18
Nov 18
Dec 18
Jan 19
Feb 19
Mar 19
Apr 19
May 19
Jun 19
Jul 19
Aug 19
Sept 19
Appointment rules option – advisors, Inspectors & PoP
Policy development and drafting
Consultation
Revision
SoS approval
Regs/ rules in force
All sets of rules drafted and consulted on in one batch
Policy development and drafting
Consultation
Analysis and revision
SoS approval
Regs/ rules in force
SWE may receive Approval/ Major mod requests from January 1st 2019
SWE prepared to receive requests and have determined a process and methodology by June 19
SWE liaises with providers to commence approval from 'go live'
SWE seeks to recruit Inspectors and administrative staff to deliver approval process. LEGAL ADVICE ON THIS PENDING
Recruitment and training process for administrators (in post Jan 19 onwards) and Inspectors (in post June 19 onwards)
Approval process administrators and Inspectors operational
Monitoring: work on developing process
SWE communicates with approved providers regarding monitoring
On 'go live' SWE transfers 'approved status' to existing provision and new monitoring arrangements

9.12. The above suggests a workable timeframe and scope for consultation and rules setting that the Board will need to consider. Since the production of this slide there has been a key piece of legal advice. Caroline and the author had hoped to be able to avoid going out to consultation on the 'lift and shift' option on the grounds that this was not significant change and would therefore not require full consultation. However, legal advice[35] states:

"I think that the essence of your query is whether any rules that SWE make under regulation 20(6) need to comply with the consultation requirement in regulation 3(2) or whether SWE could take advantage of the regulation 3(2)(a) power to dispense with consultation if SWE considers it inappropriate or disproportionate to consult. Please shout if that's not the case!

We have previously highlighted our concerns about proposal to "lift and shift" current HCPC rules, to do so in the context of educational standards in particular doesn't sit very well with what was said when we went out to consultation. In any event, the rule making provision in regulation 20(6) is mandatory- so our view is that any "holding position" that is adopted must involve actually making rules of one form or another.

Policy colleagues may have more information about the sort of circumstances that were envisaged when regulation 3(2)(a) was being drafted. I note that the consultation document states:

"79. We do think that it is important that Social Work England is required to consult on all of the rules that it makes (other than when it is making technical or minor changes). "

This point was reiterated in our response to the consultation.

Even if the rules that SWE determines are a carbon copy of the HCPC ones, the starting point is that there would be an expectation of consultation as this is stated to be the default position. The grant of the regulation 3(2)(a) power to dispense with consultation appears to envisage its use in limited circumstances, such as when the changes are so minor that they would not warrant the running of a consultation exercise (for example, an amendment to correct an obvious drafting error) or where the changes are being made as a result of new legislation or binding case law (so it would be inappropriate to consult as the changes would be mandatory).

In the circumstances you describe below there would be in fact be no change to the status quo (as SWE would adopt the wording of the HCPC's education standards and

[35] Correspondence 10/9/18 **Kemi Idris,** Lawyer, Children's Law, DfE Legal Advisers, Government Legal Department, Level 3, Sanctuary Buildings

approval process) so it would be tempting to say there would consequently be no requirement to consult. However, the very decision to pursue this strategy and not introduce new, bespoke standards which the Regulations themselves clearly envisage is not a minor or technical decision and I doubt it would be considered disproportionate to consult on whether this is an appropriate approach for SWE to take".

9.13. This advice, from the author's reading, requires SWE to consult on the 'lift and shift, consult' model as well as the consultation required around new standards and processes. The SWE Board will inevitably have to determine whether they wish to go through concurrent or consecutive consultation processes. A personal view would be for a consecutive consultation process which it is imagined would be 'cleaner' and avoid getting into the muddle of having either one consultation about both 'lift & shift' as well as new standards or two concurrent consultations about each. For this to work well, SWE would need to communicate a broader view of its processes and should not discount the option, as time goes by, of SWE communicating its planning out to the sector and engaging them in a lengthier dialogue extending the period of consultation and engagement for new Standards which this affords, allowing them time to recruit, train and deploy Inspectors within a process that will be new to SWE if not HCPC.

9.14. **My recommendation would therefore be to go for consecutive consultations** and follow Caroline's timing sequence, develop and draft policy for the 'lift and shift' (of HCPC standards and process) ahead of a January consultation. SWE would then also use the extended time to develop and draft policy on new standards and process for an April-May 2019 or May-June 2019 two-month consultation period. This would lead to an Autumn publication of new Standards which could be implemented from September 2020.

9.15. If the Board feel that this is not manageable then the author would advise leaving the second consultation period until the beginning of the new academic year i.e. September-October or October-November 2019 i.e. chiming with 'go live' – which might have some profile merit and attraction. This, at its quickest, would leave Secretary of State approval around December-January 2019-20. Working on a 12-month publication window again this puts the introduction (and deployment) of new Standards from January 2021. This fits relatively neatly into academic cycles as the Semester commences then – and, from the author's perspective, is a low risk option.

10. Policy Options for Social Work England 1: Standards of Education & Training

10.1. When SWE goes out to consult on new Standards it will need to have developed policy options ready to be the subject of consultation. The earlier part of my secondment allowed me some time to consider the six key areas of regulation

(SETs) and what options might be considered – with a brief commentary where appropriate. These are listed in detail in an Appendix One which also identifies which areas are likely to be key to the consultation and will need some further policy development ahead of consultation – in line with para 9.17

11. Policy Options for Social Work England 2: Process of Approval for Qualifying Social Work Education

11.1. This section of the report briefly examines sister regulatory body processes for approval, before combining this with the authors working knowledge of the current HCPC processes (having operated as a Visitor with the HCPC) and The College of Social Work's Endorsement programme- of which he was the national chair and also a 'reviewer' on the ground assessing programmes under those criteria. The section aims to present some policy options for SWE drawing on this experience and good practice – whilst also considering the broader structures in which such a process will sit – and the relevant timeframes which it will need to accommodate. We must remember that there are several strands to this: a) the transfer of existing approved programmes from the HCPC to SWE, b) the approval of new provision, c) re-approval of existing provision, d) dealing with significant (and smaller) changes to existing provision, e) annual monitoring, f) dealing with problems, g) workforce and h) arriving at decisions.

11.2. Due to time constraints, having briefly examined a cross section of several approaches, I have only considered in detail three processes namely those of the General Pharmaceutical Council[36], General Dental Council[37] and the Nursing and Midwifery Council[38]. Rather than analyse all five different approaches in turn, I will extract useful policy options from these processes to provide SWE with some alternative models or elements of models.

11.3. The HCPC basically operates an approval process where programmes apply for approval in the same year they are seeking approval- with a view to recruiting the following academic year. The GPC runs a lengthy approval process which lasts for seven years and wherein the prospective programme may recruit students from the third year of the process, with full 'accreditation' following the graduation of the first intake. The GDC requires prospective providers to gain 'Dental Authority Status', following which a paper submission enables a 'pending' status and visit throughout the first academic cycle (three years) and a full accreditation at first cohort graduation. The NMC runs a more familiar process, but also has an 'Approved Education Status' as a pre-requisite, before embarking on a 12 month approval process which tries to dovetail into existing validation processes within the

[36] https://www.pharmacyregulation.org/education/approval-courses
[37] https://www.gdc-uk.org/professionals/education
[38] https://www.nmc.org.uk/globalassets/sitedocuments/edandqa/nmc-quality-assurance-framework.pdf

institution[39]. One option for SWE, would be to consider some form of 'initial approval status' at institutional level to enable, potentially, more effectively, less demanding individual approval processes underneath. This could be an element of the consultation. However, I broadly take the view that the potential risks in approval were managed adequately by an HCPC process (and GSCC before it) – with high levels of compliance and a 100% approval rating. Of course, the size of the hammer depends on how one views the size of the nut it is designed to break. Were significant change top to bottom desired, a strong set of tools is required. If such wide scale is not envisaged (in the medium term) then this might be better deferred as an option.

11.4. Before moving into more detail on this issue it ought to be noted that the NMC operate an interesting sub-contracting approach to approval[40]. The NMC appointed a firm called Mott McDonald[41] in 2013 to deliver their approval process and operate an on-line portal for providers. Thus, regardless of the detail of the process, SWE may wish to consider a similar outsourcing approach. Risks appear relatively slight in such an approach and may lead to cost savings. However, SWE may also wish to defer a decision on that until it is more integrated into the working of the professional and regulatory sector. This may be something SWE wishes to consult on.

11.5. I have discussed above (para 8.7, 8.8) the criteria that SWE may employ in determining a sequence of approval visits – and what the HCPC used in determining their approval schedule. SWE will need to deal with new approvals and, of course, re-approvals. As already noted, the HCPC operate a 'one-off' approval visit which is followed up with annual monitoring. It is hard to view this as a strong model – and whilst the HCPC does, of course, have the power to visit as it wishes and especially in response to concerns, this is a process that I understand is used extremely rarely. If SWE is looking to lead change in the sector, I believe it needs a stronger framework of visits that allow it to flag concerns and determine when it returns to assure itself of quality improvements.

11.6. **My strong recommendation would be to instigate a quinquennial process of approval visits**. This was a previously used frequency under the GSCC. This is to be preferred to 3 or 4 yearly visits which perhaps does not appropriately reflect the risks inherent in this area of regulation – which are minimal based on what we know of the HCPC. Five years is also a typical cycle for universities to require their degrees to be fully reviewed (often called Periodic Course Review or similar). SWE would need to consult on this option and would, perhaps, also want to assure itself of the ability to visit in shorter timeframes where it felt issues remained. If this recommendation was to be followed (and importantly, assuming it has new

[39] Validation is the HEI's internal quality assurance process for all credit bearing academic programmes. Its requirements, in my experience across the sector, are equivalent or greater than typical professional body requirements. Its focus is, of course, on the academic requirements rather than the professional.
[40] https://www.nmc.org.uk/education/quality-assurance-of-education/how-we-approve-education-programmes/seek-approval-if-not-approved-before/
[41] http://www.nmc.mottmac.com/

standards ready for 'go live'), it produces the possible sequence of events outlined in Appendix Two.

11.7. 'Major modifications' are the significant changes programmes make to their provision that are short of a 'new course' but more significant than a 'minor modification'. All universities will have their own definition of what constitutes each – and similarly SWE will need to determine where it draws the line. This line is important as SWE will, in acting effectively and proportionately, not want to deal with minor modifications but ensure it is aware of major modifications that are planned – and take action where it feels appropriate. SWE will need to publish guidance to this effect to ensure programme know what it needs to refer to SWE and what it doesn't.

11.8. Minor modifications are commonly understood to be those that do not alter the basic nature of the course either singly or incrementally. This might include changes to module content, reading lists, minor assessment changes and so forth. Major modifications make significant alterations and can alter the basic nature of the course – but fall short of full approval. Examples might be changing mode of study (full time to part time or including a new part time route) and changes to title. This could include changing a route to a Degree Apprenticeship or introducing a new route through a programme. The question of incremental change (whereby minor changes accumulate to a de facto major change) is difficult but commonly would be understood as changes over a 2 to 3-year period that affect more than a third of overall academic credits**. SWE ought to ensure it allows itself some flexibility to make judgments in this area** and ought not to go too far beyond the elements listed in this paragraph. In any event, each HEI will have to determine this for itself within its own regulatory framework and clearly SWE would also want to ensure it was made aware of all major modifications to its approved programmes.

11.9. The HCPC set rather a high bar for notification that SWE could follow should it choose, asking for programmes to notify them only if changes affect the overall way in which the programme meets the standards – or the way the programme is recorded on the website. Alternatively, SWE could pull in all major modifications and take a view on them. This latter option may, however, not be seen as proportionate (and may well result in a significant workload) – but could form a useful tool for triggering visits or reviews of provision that may be of some concern.

11.10. Staffing of the process – and particularly the inspectors, remains a key issue for SWE to manage – especially in its first phase up to and beyond 'go live'. There are two issues here – panel composition and characteristics – with timeframes and workload. Dealing with the first, the HCPC forms 'panels' of visitors at least one of whom is from the relevant professional base and 'where possible' a second lay member from a parallel profession under the HCPC remit[42]. These visitors are accompanied by an Education Executive who acts as guide and note taker. This process, from personal experience works relatively well. The Executive officer support is extremely helpful in determining comparative views around standards

[42] http://www.hpc-uk.org/education/processes/approval/

issues – 'what is good enough' – as well as the practical support of freeing visitors up from the administrative burdens (which, given the sheer volume of paperwork for these events are *considerable*).

11.11. This can be contrasted with the approach taken by a single profession regulator, namely The College of Social Work and its Endorsement process. This process identified three main constituent stakeholder groups to draw 'reviewers' from: academics, practitioners and service users. It basically operated on a two-person approach, with administrative support provided centrally by a dedicated staff member and each visit drew on one academic and one from the other two groups. In terms of recruitment this led to a split of 50% academic, 25% practitioner and 25% service user carer. The logic behind this particular delineation was the need for at least one of the group to have a detailed working knowledge of the validation process which endorsement (and, of course, typically the HCPC visitors as well) would sit alongside, sometime in two day events full of detailed academic jargon. TCSW reviewers, of which the author was one, struggled with the administrative burdens of the process but TCSW were not sufficiently funded to enable an executive officer role as with the HCPC.

11.12. In recruiting Inspectors, SWE will need to take account of particular characteristics when it considers the exact mix of panel composition – and whether it has a SWE officer in attendance. Academics ought to be qualified social workers, on the register with experience of validation processes, delivering or managing social work education. Practitioners, similarly, will need to be on the register, with a certain number of years' experience of practice and preferably some background knowledge of the education programme arena or placement supervision etc. In both the cases of academics and practitioners some seniority of position is extremely helpful – regulatory roles in validation process will need to assert themselves in these situations or else be swamped in the general theatre of the validation panel (which can be 20 plus people, including very senior academics). Service users and carers may well be difficult to recruit and careful attention will, of course need to be given to their support needs and payment if on benefits. For all groups their training needs are significant.

11.13. Training for Inspectors, speaking as someone who has both received training (with the HCPC) and delivered it (with TCSW) is vital for all personnel. The key issues it will need to cover are as follows:

- The process SWE has created to approve programmes and where Inspectors 'sit' within it and the support they will receive
- The standards being used to assess the provision (and relevant guidance)
- The paperwork
    - From HEI to SWE
    - For the event itself
    - To report back into SWE – a key issue
- The university validation process, its norms, functions and stakeholders

- Some comparative exercises to establish norms of 'good enough' lines on key issues

It is suggested this is set as around a two to three-day programme of training- with possible a day per year thereafter to update and refresh. SWE will likely, in coming years need to recruit new Inspectors and have a rolling programme for their engagement.

11.14. Given the above requirements, I now want to briefly examine some timescale and workload issues to try and establish numbers. To outline these thoughts, some assumptions need to be made, namely that the HCPC will, in the Spring of 2019 cease to accept approval requests. SWE will need at that point to have in place a process to accept them from that point onwards and, therefore, in advance of 'go live'. The administrative support needs to be in place from that juncture (as does the decision on how to determine a sequencing for approval visits discussed above). SWE could use some form of interregnum between the two processes, but this is seen as a moderately risky strategy – in effect stopping the approval of new social work programmes in England for a period of time. The longer the interregnum the greater the risk.

11.15. If we therefore anticipate that at 'go live' SWE will have a process in place to deploy then we can work backwards to ensure we have the Inspectors recruited, trained and allocated in that 2018/19-time frame:

11.16. Section 8 outlined the probable workload of Approval visits, with the HCPC currently visiting around 14 HEI's per annum. But, crucially, in its transitional phase following on from GSCC it approved approximately 27 programmes a year over three years. The recommendation in Appendix Two is for Year 1 to approve under 'lifted and shifted' HCPC arrangements, with the approval under new standards to commence in Year 2 – which becomes the bigger workload challenge and is therefore considered below. We also know that Autumn/ Winter is a busy and preferred period for approvals. SWE has some options with regard to the make-up of its Inspector panels. If, simply for arguments sake, we merge the TCSW and HCPC processes the annual staffing needs for these events are as follows:

- 2 x Approval Officers, SWE based, to administer and attend the Panel events. Approximately 14 events each, per year, dealing with all internal processes, managing achievement of conditions and have a role in assessing and supervising the Inspectors.

- The number of Inspectors required depends, of course, on the size of the panel and also the numbers of panels each will be expected to do. 28 panels, assuming 2 Inspectors at each equates to 56 'events'. A pool of 10 Inspectors would need each to do at least 5, a pool of 20 would need to do nearly 3 each. A pool of 30 (recommendation for Year 2) would need to do less than 2 each – but builds in capacity for the unknowns of SWDA and allows for sickness, resignation and simple unavailability. Furthermore, it also affords some scope for increasing Panel size where larger, complex e.g. national programmes are under approval. SWE can take a view on the person specification for the Inspectors, but this suggests, under a TCSW type model that SWE needs to recruit 15 academics, 7 practitioners and 7 service user/ carers to act as Inspectors.

12. Visioning Social Work Education and Training Standards

12.1. Under direction from the SWE CEO, I have been asked to consider the possible constructions of a 'vision' for SWE. I have looked at this on two levels – first I will consider the high level 'vision' types of statements that might capture SWE's mission and values with regard to Education & Training. Secondly, I will suggest some basic policy options drawing on the above evidence and make observations about timeframes and 'roadmaps' to achieve the vision statements.

12.2. It is useful to refer to existing areas of regulatory 'vision' as guidance for thinking. The author has therefore reviewed the relevant area of statements with four key regulators namely Nursing & Midwifery Council[43], Scottish Social Services Council[44], General Medical Council[45] and Northern Ireland Social Care Council[46]. In examining these different regulatory approaches, these regulators tend to develop 'themes' around their standards such as the NMC and GMC who use:

- Learning Environment/ Culture
- Governance/ Leadership/ Quality
- Supporting Learners/ Empowerment
- Supporting Educators/ Assessors
- Developing Curricula/ Assessment

12.3. The NISCC, for example, overlays this with broader aims:

- That social workers are trained to the highest standards to provide safe and effective practice linked to the registration requirements;

[43] https://www.nmc.org.uk/education/our-role-in-education/
[44] http://www.sssc.uk.com/workforce-development/qualification-information-for-providers/standards
[45] https://www.gmc-uk.org/education
[46] https://niscc.info/degree-in-social-work/standards-quality-assurance

- That teaching, learning and practice is fit for purpose;
- Effective service user and carer participation in education and training provision;
- A coordinated approach with regulators of social work service provision
- Continuous improvement in education and training provision through monitoring and review including thematic reviews.

12.4. Taking this broad regulatory approach, how might we express what, potentially, we are we seeking to achieve?

Thematic area	Possible Vision statement	Commentary
Governance Quality (Core purpose)	Social Work qualifying programmes produce high quality graduates who deliver safe and effective services. Diversity in delivery is underpinned by consistency of quality	Speaking to core POP objective
Governance Developing curricula	Social Work programmes are shaped by the needs of employers and insight of practitioners to ensure a constantly evolving curriculum which matches the contemporary demands of the whole sector – (and learns from the latest research knowledge?)	Relevant, practice led, evolving curriculum for a broad sector. Implies genericism. Doesn't include research/ knowledge generation/ what works (could include this SWE USP?)
Supporting learners Learning environment Supporting educators	Social Work programmes deliver, in partnership, high quality practice learning experiences (of sufficient length) to ensure readiness to practice and register at point of graduation	This separates out (SWE USP?) practice learning, but underlines flexibility in structure (if added) and 'readiness to practice' being the point of departure from education to practice
Supporting learners Learning environment Supporting educators Developing curricula	Social Work programmes ensure that the learning opportunities they provide reflect and learn from the diversity of the communities their graduates will serve.	This doesn't spell out service users and carers but tries to emphasise a wider community perspective (SWE USP?). Pushing SUC involvement in delivery but also programme development – but using broader terminology, could add in SUC if desired
Governance Learning environment Supporting educators	Social Work programmes are managed and administered to a high standard and resourced sufficiently to ensure they meet the expectations of the regulator	Focus on effective functioning of programmes, picks up resource issues which might be problematic.

Governance	Social Work programmes experience a positive, developmental relationship with the regulator that shares a goal of continuous improvement.	Unusual, but arguably forward thinking (SWE USP?), for a regulator in this area of policy – the quality of the relationship between regulator and regulated. The function of the relationship is improvement, upstreaming built into approach.

12.5. Picking up on the nature of the relationship between regulator and profession – specifically around the relationship between SWE and providers of social work education, before some concluding remarks, the author wishes to raise the profile of two important concepts from the literature that come from identified best practice and which SWE may wish to consider taking forward. In their document, Right Touch Reform (2017[47]) the Professional Standards Authority outline some excellent ideas that SWE should reflect upon. The first is the creation of 'formative spaces' which are regulator sanctioned informal 'spaces' which allow the discussion and hopefully resolution of regulatory issues in a less adversarial space. Whilst conceived of as a way of engaging with registrants, this could be very useful with HEIs, especially where significant change is being pursued. Parallel to this is the concept of 'upstreaming'. This is broadly the action taken by a regulator to take learning from its data to advise the sector and, through various engagement activities, therefore 'head-off' potential regulatory issues. From the author's perspective this was an approach where the HCPC singularly failed. Yet upstreaming (and formative spaces) offer strong, constructive pathways for a new regulator to help create meaningful and mutually respectful relationships with those it regulates.

12.6. As noted above in para. 4.4, there are five key elements of policy drive from major government reports that, as we have progressed through the evidence, appear to retain currency as issues that SWE might wish to pursue. Of course the first major recommendation from both Narey and Croisdale-Appleby's report was the creation of a profession specific regulator. This section, by way of a conclusion to the report, will examine some direct policy issues in line with their relative short, medium and long term timelines. This section inevitably draws heavily on the authors experience of working in the sector (and of leading endorsement regulation with TCSW) – but much less on direct evidence. In this sense I hope the Board see this as a useful contribution to the discussion about policy options in its deliberations.

[47] https://www.professionalstandards.org.uk/publications/detail/right-touch-reform-a-new-framework-for-assurance-of-professions

12.7. Table

Policy Issue	Short options (0-2yrs)	Medium options (2-5yrs)	Long term position (5years +) - GOAL
Clear curriculum content expectations	Enshrine key reference points in approach: QAA/PCF/KSS.	Use SOPs model/ similar to integrate all guidance under one SWE umbrella which becomes the sole reference point OR Establish base reference points	SWE offers a rationalised, nationally recognised curriculum guidance
Rigorous course endorsement	Lift and shift of old process offers little scope for meaningful change – but new standards afford opportunity for whole sector review. Focus on training of new visitors and structures for approval	New process could introduce: • 3 or 5 yearly visits • Placement visits as part of approval • Risk based regulation and approval to criteria with improvement plans • Uses 'formative spaces'	SWE manages a robust approval process respected by the sector, employers and practitioners – and recognised by the public as protecting them
Raising Admission criteria	Lift & shift (and time frame) inhibits ability to introduce tariffs. Include in consultation and develop strategy around SWDA	SWE standards include a tariff entry/ equivalency. Admission benefits from greater SU and practitioner involvement	SWE ensures those entering the profession are of the highest calibre with a shared view from all stakeholders
Review of academic standards	SWE commissions themed research on academic standards areas e.g. assessment of practice, sector attainment levels. Could consult on e.g. pass rates	SWE has bi/annual standards reports as an 'upstreaming' mechanism	Academic standards are assured through SWE data and inform re/approval process in a schema of continuous improvement
Workforce planning	Lift and shift incudes a process for taking this into account, but work needed to strengthen its weakness. Need to develop a nationally recognised workforce planning model - consultation	New standards refer to robust mechanism that informs SWE's understanding of workforce needs and, in turn, adjusts supply to demand more closely over time. Bursary allocation linked to supply needs not historical intakes	SWE plays a central role in determining workforce needs for the sector

This concludes the draft report

Draft submitted 8/10/18

Appendix One

Standards areas	Current SETs	Option	Commentary
Entry qual and provider	HCPC Threshold Bachelors with Hons	1. Steady state 2. MA only 3. MA for stat roles 4. No FE providers	1. CONSULT: Recommendation – retains multiple access routes inc. new SWDAs 2. Major impact on supply at least in short term. Exclusion of non-graduates. Used for arts therapists, forensic psychologists 3. As above, could be seen as divisive. Could be a phased approach. 4. SWE could consult on removing social work from Further Education where it exists in a franchised state. This might be too disruptive in the first phase for SWE.
Admissions	2.1-2.7	1. Tariff a. Introduce min tariff entry b. No action on tariff entry 2. Standard of English a. Leave at IELTS 7 or equivalent b. Increase to LIETS 8 or equivalent c. Avoid IELTS and make generic standard/ statement 3. Service User involvement in admission 4. APEL	1. Relatively rare in SETS across a range of professions. Appears in Teaching Partnership criteria and also was in College of Social Work endorsement criteria. However, SWDAs make this quite challenging (but not impossible). a. Possibly problematic but recommendation: consider possible minimum/ baseline tariff recommendation? For UG provision excluding DAs. New tariff points for reference 3xAs= 136, 3xBs= 120, 3 xCs=96. 2:1 only for MAs? b. A low risk option but not in keeping with policy imperatives 2. Standard of English a. IELTS, in its guide for employers talks of 'linguistically demanding academic courses' requiting 7.5-9. HCPC currently advises on 7. b. CONSULT Recommendation – but will require careful handling. NB majority of international social workers are from US, Australia and South Africa c. Perhaps weak and arguably in avoiding existing structures is not 'right touch'. IELTS in common usage across professions 3. SU involvement a. CONSULT. HCPC were relatively late to this table and this is an obvious area for

			a win. Strengthening requirements around SU involvement in admission would play well in the sector. Costs on the larger programmes might be significant – especially where the requirements for SU involvement in each interview – as opposed to involvement in the process. 4. APEL a. Opportunities here for some innovation. APEL values previous experience and having a 'suitable process' doesn't encourage programmes to value experience. Universities regs tend to cap at 1/3 of a programme, but SW courses do not, in authors experience, APEL practice. There is an argument that encouraging through regulation the APEL of placement 1 for example, promotes experienced social care workforce to get qualified. It also leads us down a two year UG programme – which might add to route flexibility.
Governance	3.1-3.18	1. Management a. A Lead Social Worker for Courses in the University b. Employer led/ partner Management Committees c. Partnership d. Workforce planning	1. Management a. CONSULT: In line with the NMC, Midwifery courses have a designated 'Lead Midwife'. Translated to Lead Social Worker (on the register) this might cement the professional practice base for the programme. There is a 'named' person in current HCPC arrangements. This idea was popular in pre-consultation' work. The Lead Social Worker could have a role leading quality, curriculum design and fitness to practice. b. The TP policy put employers as leaders of the partnership. This is harder to apply to a university course which cannot be managed by those not employed by the HEI. But a requirement could be around a management committee for the provision that has (senior) employer representation

		2. Practice Learning a. Steady state b. Stat placement requirements 3. Quality of staffing a. Academic b. SSRs c. Practice educator 4. Suitability	c. CONSULT Partnership is dealt with weakly in the HCPC standards and this area is ripe for strengthening, if we can draw the right balance with demands on e.g. LA time. We could explore regulation that places placement providers within the management structure of the programme. This will be the case in most but perhaps not all, programmes. Authorities will often relate to more than one University so this could be draining on scare LA resource. d. CONSULT: One way to bind this together is to approve at a set number/ band of recruitment linked to availability of quality placement provision. It's hard to determine where programmes are growing ahead of the availability of good/ statutory placements – but it is assumed to happen. The control is to ensure at approval that the LA partners are committing (we couldn't use that word) to a level of placement provision. Programmes would be capped around that number. Recruitment is not an exact science and other university regulations inhibit or prevent waiting lists. So we need flexibility – hence band. Going over band could be a risk factor for a visit. 2. Practice Learning a. Steady state avoids disruption of current provision, but doesn't tackle perceived problems in the capacity and quality of both placements and practice educators. The author understands there is little (DfE) support for making demands on LAs to provide more and the TP process has not, despite significant investment, changed this situation significantly. b. CONSULT: Recommendation: regulation develop and enshrine a clear definition of a stat placement – not one that relies solely on a locus with an LA, but which broadly encompasses the range of PVI sector setting which carry

			out parallel/ farmed out stat tasks. This allows some growth in 'stat' placement and affords welcome clarity. SWE will need to work up a definition. Will not resolve the ongoing problem of LA employers seeing LA placements as the only ones that matter. 3. Staffing a. CONSULT: Recommended: academic staff (who are qualified social workers who primarily teach on social work programmes) would be on the Register. Variant: programme leaders must be on the register. b. Some regulatory bodies (e.g., midwives) have recommended/ required staff student ratios. These are difficult areas as they commit universities to significant resource spend. However, there is evidence that there is significant variation in SSRs on SW courses. In essence the fewer lecturers per student the more likely there are limitations in experience, expertise and therefore quality of delivery. Also, it is not always easy how one defines an SSR. Do you include the staff member who delivers a few lecturers on law from another department for example? Probably better under guidance. c. CONSULT: The Practice Educator Standards are a product of the College of Social Work and are not formally held anywhere (e.g. by BASW). This is a major issue for the sector (pre-consultation feedback) and needs picking up. 4. Suitability a. Covering conduct issues in the student body (including placement breakdown). This area could benefit from requirements around employer involvement in decisions. There is some evidence from pre- consultation that universities might be 'holding on' to students that placements have failed. Whilst this is anecdotal, we could move to a place where partners are involved in decision making (at certain levels

			perhaps). Similar issues around service user and carer involvement. The lack of a register space for students is a lively issue: SWE does have capability to develop one. The suggested role of Lead Social Worker links into this (see above)
Programme Design	4.1-4.11	1. Genericism v specialism 2. Curriculum guidance 3. Attendance and timely completion 4. Flexible design	1. Genericism v specialism a. Steady state is retention of a generic qualifying programme b. Pathways: there was no overt support for specialism at qualifying level in the pre-consultation work, but courses can have 'de-facto' pathways through the programme involving e.g. year 3 options modules, final placement setting and dissertation which could all be in child protection. However, sensitivity is significant in this area and this is not a recommendation we consult in this area at this stage. 2. Curriculum guidance a. CONSULT: A range of guidance exists that affects the qualifying social work curriculum (QAA Benchmarking statements, PCF, KSS (BASW and CSWs statement) and, of course, the SOPs. SWE could consult on whether we needed new SOPs at all or whether what existed was sufficient. The NMC doesn't offer curricula. 3. Attendance and timely completion a. CONSULT: The regulator might not wish to get into the minutiae of attendance monitoring but could make requirements around making up missed days etc. Timely completion is to do with the length of time it takes to complete an aware. Consider, for example, a part time UG degree (typically goes at half the pace). This takes six years. If someone take time off for a baby, we can move into an area where a student's first year is some 8 years ago- is that appropriate given the changing nature of legislation and policy? Solution: requirements around timely completion or repeat

			year. The GMC has guidance on this issue for foundation year students[48] 4. Flexible design Arguably, flexibility in design is being led by new DfE initiatives (namely Frontline and Step Up). This has led to innovation in structures and successfully challenged a long standing and arguably inflexible orthodoxy. SWE might take the view that such innovation should be welcomed and encouraged (develop)

[48] https://www.gmc-uk.org/education/standards-guidance-and-curricula/position-statements/absences-from-training-in-the-foundation-programme

Practice based learning	5.1 -5.8	1. Placement structures a. Steady state, reconfirming flexibility b. Upper/lower amounts 2. Placement variation a. Steady state b. Pathways 3. Quality and sufficiency of educators	1. CONSULT: A major issue in all SW programmes. Current HCPC SETS do not specify structure, duration or range of placements – but most carry a model that was enshrined (as opposed to designed) in TCSW Endorsement. 30 prep days, 70 P1 and 100P2. These structures have been played with in Fast Track routes but overall numbers of days have not changed much even there. a. Steady state simply carries this flexibility forward and SWE in approval will need to take a view on appropriateness in line with a regulation around 5.2 b. Flexibility could be flagged more where SWE delineates a minimum number of days. This might be especially useful where Degree Apprenticeships are likely to conflate 'work' and 'placement'. But it could lead to e.g. shorter programmes for experienced SW assistant type roles and avoid the limitations around APEL procedures (1/3 of a course typically the maximum eligible for APEL and placements often excluded). 2. Placement variation: a major issue within regulation of 'fast track' routes which seek to promote depth of specialism in e.g. child protection work. Current steady state is that HCPC approve for 'all' social work and therefore need variation in placement experience to (broadly) cover adults and children. This was a significant difference between Narey and Croisdale Appleby report – the latter *against* (seeing specialism as PQ) the former *for*. a. Steady state avoids significant fallout of moving to specialism – and clearly can accommodate significant diversity that exists – Inspectors will need careful briefing on this. b. Retain genericism but support pathways. Many courses run, in effect, some form of pathway where e.g. option modules, final placement and dissertation will all be on the same themes (mental health/ child

			protection etc.). allow e.g. 60/80/100/120 credits of specialism. 60 represents 'half' of an academic year. 3. CONSULT: Also discussed under governance above. PEPs review could deal with quality issues and could be brought under SWE standards to provide a home. SWE could emphasise CPD angle through qualification/ annotation.
Assess ment	6.1 – 6.7	1. SOPs 2. Standards of performance, Conduct & Ethics 3. Steady state	1. CONSULT: As discussed above, SWE will need to decide an approach to SOPs 2. CONSULT: The HCPC have Standards of Performance, Conduct & Ethics[49] with a separate guidance document for students who, of course, are not yet registrants. These standards cover issues such as communication, delegation, confidentiality and risk. Again, this could be covered within a single SET document. 3. CONSULT: Assessment is perhaps the main area where the HCPC SETs seem logical to carry into SWE SETs as they cover obvious and non-contentious areas. SWE could introduce lines if it so wishes around BME Attainment. The HCPC requires one External Examiner who is professionally qualified, experienced and *normally* on the register.

[49] https://www.hcpc-uk.org/aboutregistration/standards/standardsofconductperformanceandethics/

			SWE could consult on the possibility of ensuring at least external examiner is on the register.

Appendix Two

Event	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Existing programmes	1. Transitionally approved at 'go live' 2. SWE determines criteria and 3. Schedules re-approval visits under SWE Standards commencing year 2 through to 4	First tranche of approval visits under new standards ordered in risk order. SWE gathers intelligence to determine next approval date (normally five years)	Second tranche	1. Third tranche 2. All programmes now approved under the new SWE E&T standards	1. Major review of approval process 2. Review of new standards 3. Amendments made and published Year 6 12 months ahead of Year 7 implementation	Promotional and engagement work	First tranche re-approval visits under SWE
New programmes	Approved under lift and shift (HCPC) standards. SWE could take a view that these programmes will be visited again in Year 5 rather than 6	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards

Annual monitoring	Continues under lift and shift (HCPC) standards	Continues under lift and shift (HCPC standards)	SWE annual monitoring process	SWE annual monitoring process	SWE annual monitoring process	SWE annual monitoring process	SWE annual monitoring process
Major modifications	Approved under lift and shift (HCPC) standards.	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards	Approved under new SWE standards

British Journal of Social Work (2019) **0**, 1–18
doi: 10.1093/bjsw/bcz152

Regulation, Registration and Social Work: An International Comparison

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Abstract

The anticipated change of social work regulator in England from the Health and Care Professions Council to Social Work England in 2019 will herald the third, national regulator in seven years for the social work profession. Social Work England will be a new, bespoke, professionally specific regulator established as a non-departmental public body with a primary objective to protect the public. Looking globally, we can observe different approaches to the regulation of the social work profession—and many different stages of the profession's regulatory journey between countries. Using a comparative policy analysis approach and case studies, this article looks more closely at three countries' arrangements and attempts to understand why regulation might take the shape it does in each country. The case studies examine England, the USA (as this has a state approach, we focus on New York) and New Zealand, with contributions from qualified social work authors located within each country. We consider that there are three key elements to apply to analysis: definition of role and function, the construction of the public interest and the attitude to risk.

Keywords: fitness to practice, international social work, regulation, social policy, social work

Accepted: November 2019

Introduction

On 14 January 2016, Nicky Morgan, the then UK government Secretary of State for Education, announced plans to remove social work (in England) from the regulatory control of the Health and Care Professions Council (HCPC) and to place it within a profession-specific regulatory body (subsequently titled as Social Work England), which is due to take on its functions in December 2019. Her statement noted that 'the new body will have a relentless focus on raising the quality of social work, education, training and practice in both children's and adult's social work' (Department for Education, 2016a). With this announcement, social work in England was consigned to experience its third national regulator in seven years. Indeed, at the time of the announcement, the HCPC had been regulating the profession for less than four years. This article begins as an attempt to understand some of the political and conceptual elements of this relatively rapid period of change by placing them in a broader international context. Through the use of case studies within a comparative policy analysis (CPA) model, we will examine three countries' experience of social work regulation and the journey it has taken to arrive at its current point. In addition to England, the territories chosen include New York in the USA, where there is a state rather than national regulation of the profession. This is contrasted with New Zealand, where a national debate recently took place about planned legislation around social work regulation. The authors of the case studies, who are social work academics with a strong interest in regulation, examined the narrative journey of the profession within their own country/state towards—or away from—regulation. In particular, the structural elements of regulation are discussed, namely protection of title, registration, fitness to practice and education and training. This article acts as a contribution to a relatively small field of analysis about international social work regulation by also placing the profession's experience within the broader literature of the growth of regulation across a range of professions and areas of social governance.

This research takes its first step as an attempt, through CPA, to better understand the nature of the changes in social work regulation policy in England. Given the investigative thrust of this research, a strong theoretical model is required to marshal the information gathered—and CPA perhaps affords the most appropriate model. 'Comparison lies at the heart of all policy analysis' (Wolf and Baehler, 2018, p. 420); in that, it facilitates an understanding of one's own situation via benchmarking, revealing the impact of key policy actors, sources of potential policy transfer and the political differences that shape them (Radin and Weimer, 2018). Thus, by understanding the situation of others, we better understand our own. Methodologically, we have adopted a 'case study'

approach, which allows contextually rich, interactive comparison, over time, which is specific to a place but also affords an opportunity to develop extended narratives—albeit constrained by space herein (Wolf and Baehler, 2018). There are, of course, limits to this approach; Marmor (2017), for example, describes CPA as 'lacking a common framework', whilst Rabin and Weimer (2018) warn of the dangers of 'naïve transplantation' (insufficiently considered adoption). To address these issues, we have focussed more on 'understanding'—and in so doing have benefitted especially from the recruitment of country-specific expertise to develop a broader understanding of each country's situation—again a feature of CPA (Radin and Weimer, 2018). Four key elements will be presented that shape the theoretical approach of this piece, which draws particularly on Marmor's (2017) and Radin and Weimer's (2018) recent work on 'rules' for CPA. First is 'clarity'—of purpose, where we are attempting to understand the shape of social work regulations in three different areas (England, New York and New Zealand) to better understand, particularly the recent spate of changes in regulation in England—whilst avoiding the 'muddled language' of, in this case, regulation. The second rule is related to 'context'—and each case study will attempt to contextualise the nature of the (social work) sector as it exists in each country. The third rule relates to 'definition' to ensure comparisons are meaningful through clear definition of approach. Our case studies will examine three key areas: registration (a state-sanctioned model of listing 'approved' practitioners), fitness to practice (a model for investigating the behaviour of practitioners against professional standards) and protection of title (arrangements for who can be formally labelled a social worker). Finally, the fourth rule relates to our need to examine country-specific 'constellations' of values, politics and institutions that affect our comparative analysis which we will do through our case studies (Marmor, 2017).

Contextually, we are also cognisant of a range of literature around the sociology of professions and note, particularly, that the twentieth century witnessed a growth in occupations seeking to become professions, a process whereby they sought recognition for their particular form of expertise beyond that of the general public (Elliott, 1972; Malin, 2017). However, it is interesting to note that one review of the existing literature found that 'there is only limited empirical evidence as to whether registration does, in fact, lift the professional standing of social workers or protect consumers from substandard practice' (McCurdy *et al.*, 2018, p. 1).

Whilst the drive for professional regulation was broadly welcomed, there have been some criticisms of the rationale for, and operation of, the regulatory authorities for social work. It has been argued that there is an inherent power imbalance, for example, in the proceedings around fitness to practice and there is often a failure to take into account wider

structural and organisational failings that can negatively impact a social worker's ability to do their job (Kirkham *et al.*, 2019). However, any attempt at an analysis of the regulatory processes in place for social work is not straightforward due to significant variation in the activities defined as social work, with some countries not including statutory responsibility for individuals, whether children or adults, as being part of a social worker's duties (Hussein, 2011). Given such disagreement over the roles and tasks of social workers from country to country, it should be no surprise that there is also a divergence in the way the profession is, or is not, regulated.

Case study 1: England

Structure

Social work in England became a regulated profession following the inception of the General Social Care Council (GSCC) in 2001. The GSCC's sister organisations in Scotland, Wales and Northern Ireland (the Scottish Social Services Council, Care Council for Wales (now Social Care Wales) and Northern Ireland Social Care Council) were founded at the same time and still currently perform their regulatory functions. Since 1 April 2005, 'social worker' has been a protected title under the Care Standards Act 2000 in England and Wales, with Scotland (September) and Northern Ireland (June) coming on line later that year. Only those registered could use the title or carry out the tasks of a social worker—or face a fine of up to £5,000. Looking across Europe, Hussein (2011, 2014) examined transnational social work recruitment into the UK, its commonwealth bias and observed the 'very diverse' range of social work roles and qualifications across the European Union.

In 2012, the HCPC assumed responsibility for the 'register' which it maintains for sixteen different professions, with 93,206 Social Workers currently registered (in England) amounting to ~27 per cent of the total register (HCPC, 2018) which includes professions such as arts therapists, biomedical scientists, dieticians and speech and language therapists. Graduates of approved courses (at both undergraduate and postgraduate levels) apply to enter the register and a social worker must be registered to actively perform their duties. If a registered professional fails to meet the required professional standard, then they can be called before a 'fitness to practise' hearing where the ultimate sanction could be that professional registration is removed. This is especially pertinent given that all the professions listed above have 'protection of title', meaning that only those on the HCPC's register can call themselves by their respective professional title. Thus, in terms of social work in England, anyone

struck off can no longer practice as, or even call themselves, a social worker.

Narrative

With the regulation of social work, England finds itself in a state of transition on a number of fronts. At the time of writing, England is in the form of regulatory interregnum as we await the HCPC replacement and details of any transitional arrangements. The Children and Social Work Act 2017 was granted royal assent on the 27 April 2017, creating a new body (Social Work England) which will assume its regulatory functions in 2019. The move from specialist profession to generic sector regulator and back is notable for its relative speed, and the profession will have related to three different national regulators in seven years by 2019. Furthermore, within this timeline, The College of Social Work has come and gone. Arriving from recommendations made by the Social Work Task Force, the college was initiated in 2012 and formed as an independent (England focussed) body within a broad professional college model, designed to promote the profession and quality standards of social work within practice and education. By June 2015, its doors had closed ostensibly around funding, never managing to find sufficient membership nor adequately win government confidence, to free itself from reliance on central finance (Community Care, 2016). Nevertheless, others saw this as another move in central control of a profession that was increasingly at the mercy of political interference (Beresford, 2015). The ability to exert such control is arguably linked to, or facilitated by, opportunity borne from the extremely high visibility of national child protection scandals in the UK, attendant constructs of public interest and subsequent policy intervention. The establishment of the GSCC (in 2001) was clearly part of a policy response to the case of Victoria Climbié who died in February 2000 (Laming, 2003) but also a product of the new labour government which came into power in 1997 and oversaw a marked increase in the regulation of all professions (Haney, 2012). However, as noted above, the GSCC was abolished and all of its powers were transferred on 1 August 2012 to the Health Professions Council which, in recognition of the expansion of its remit, changed its name to the HCPC (McLaughlin, 2006; McLaughlin *et al.*, 2016). This time, the public interest backdrop related to the case of Peter Connelly who had died in August 2007 (Laming, 2009).

Social work appears to be a highly volatile policy space in England in recent years with a plethora of government initiatives, often led by the Department for Education (DfE) whose UK mandate lies around children's services and education. Many of these infringe on what might be termed as the 'regulatory space' of the profession. Thus, at qualifying

level, we have seen the introduction of new, compressed, work-based entry routes and teaching partnerships (Department for Education, 2016b)—a funding stream supporting high academic tariff, local authority orientated and led arrangements that have two tiers of criteria (basic and stretch), which form a 'semi-regulatory' requirement in excess of the HCPC standards for education and training (SETs). The HCPC operates a model of generic standards (SETs) that it uses to assess against to approve provision and similarly standards of proficiency (SOP), which are professionally specific threshold outlines of what a student must 'know, be able to understand and do' by the time they complete their training. The SOPs are designed as 'the threshold standards necessary to protect members of the public' (HCPC, 2017a). Other risk-orientated approaches to the control of the regulatory space of social work include the new pilot of the National Assessment and Accreditation Scheme currently being rolled out by the DfE.

With regard to the regulatory management of direct practitioner risk, it is interesting to note that fitness to practice has become the major business strand for the HCPC. Against an annual income of £31 M, the HCPC spends nearly half (£15 M) of its income each year on the pursuit of fitness to practice issues, conducting some 1,200 public hearings every twelve months (HCPC, 2017b). Furthermore, we can see that despite social workers forming 27 per cent of the whole HCPC register, they account for 51 per cent of the numbers of fitness to practice cases. In a recent HCPC fitness to practice report, we find that 1.3 per cent of the registered social workers are subject to some form of referral but have the greatest volume (59 per cent) closed at initial investigation (HCPC, 2018).

Case study 2: USA/New York

Structure: USA

Social work in the USA is regulated by fifty individual states and the District of Columbia (D.C.) through individual state licencing boards. Social work regulation was first established by the state of California in 1945, yet the majority of other states did not initiate or establish regulation for many more years (Bibus and Boutte-Queen, 2011). However, due perhaps to an emerging view that employer oversight was inadequate as a regulatory proxy, by the 1970s, all states moved towards regulation and licensure of social workers, and by 1992, all states and DC established legislation regulating social work (Bibus and Boutte-Queen, 2011). In addition, each of the fifty states and DC have developed their own definitions of social work (Hill *et al.*, 2017). One reason for the varied definitions is the extent to which social work in the USA covers a

wide range of tasks spanning from micro (e.g. work with individuals and families often referred to as 'clinical' social work) to macro practice (e.g. work involving leadership, management, community organising and policy development; Gitterman, 2014). An examination of the fifty-one state and DC definitions identified more emphasis on micro or clinical practice over macro practice (Hill *et al.*, 2017). Therefore, there is not only a lack of a single definition of social work practice within the USA but also a lack of a consistent, national regulatory body or set of guidelines of the profession of social work across the USA, which is argued to have implications for solidarity within the profession, public perception of social work and identification as a social worker (Lightfoot *et al.*, 2016). Due to the state-level regulation in the USA, this case study focuses specifically on one state, New York State (NYS), as it has one of the highest numbers of employed social workers in the USA (Bureau of Labor Statistics, 2018).

Structure: NYS

In NYS, licencing and professional regulations for social work are guided by Title VIII of the NYS Education Law, the Commissioner's Regulations and Rules of the Board of Regents, and administrative decisions made by the State Education Department. The title of 'social worker' on its own is not necessarily a protected title but, rather, the titles associated with social work licensure are protected, which are only granted to individuals who qualify from a graduate social work programme (i.e. Master of Social Work (MSW)). Individuals who qualify with a social work degree at the undergraduate level are not required to obtain a professional social work licence; in fact, there is no social work licence available for individuals who qualify at this level in NYS. In NYS, the protected titles associated with social work are the two available licences: licenced master social worker (LMSW) and licenced clinical social worker (LCSW). Only individuals who hold either an LMSW or an LCSW may use the relevant titles with LCSWs being able to provide clinical social work or psychotherapy, whereas LMSWs can only provide clinical social work under supervision. Although 'social work' is not a protected title, to practice social work in organisations, individuals are required to hold an LMSW or an LCSW and must register their licence with the State Education Department's Office of the Professions. As of 1 January 2019, there were 26,884 LMSWs and 25,254 LCSWs registered in NYS (NYSED, 2019a).

Individuals holding the LMSW and LCSW are obligated to adhere to the state laws and regulations governing the profession and are advised to follow the practice guidelines consisting of values, ethical principles

and standards as stipulated by the National Association of Social Workers (NASW) Code of Ethics (NASW, 2017). Allegations of professional misconduct can only be made when the individual violates the state laws and regulations (not when violating professional guidelines), which will result in an investigation of professional misconduct. Boundaries of professional practice and unprofessional conduct in the practice of social work as an LMSW and LCSW are set out in Section 7708 of Article 154 of the Education Law and Part 29 (Sections 29.1, 29.2 and 29.16) of the Rules of the Board of Regents and relate to competence, criminality and professionalism.

Any person or organisation who has reasonable cause to suspect professional misconduct is to report such violations to the Professional Conduct Officer at the Office of the Professions NYS Education Department. In serious cases, disciplinary proceedings may involve suspending or revoking a licence and removal of the individual from the register of licenced social workers with the State Education Department's Office of the Professions. In 2018, there were fourteen summaries of actions on professional misconduct and discipline against social workers (NYSED, 2019 b); this number represents 0.03 per cent of the total 52,138 registered social workers. Of the fourteen summaries, six individuals surrendered their licence and the remaining eight were subject to suspension and/or probation with fines ranging from $500 to $2,000.

Narrative

There is clearly a lack of unity in the regulation of social work across the fifty states and DC NYS places emphasis on social work practice at an advanced level, where licensure is only granted to individuals obtaining a graduate qualifying social work degree (i.e. MSW). The title of social work is not protected, which lessens the credibility of the title among the general public. This leaves unlicenced individuals who are using the title of social worker unprotected and unregulated, which contributes to a lack of unity among the general public as to the role and function of social work. Equally in NYS, registration and professional misconduct rules and investigation procedures are placed alongside other state-regulated professions (e.g. physical therapy, architecture and public accounting), which does not provide social work a single platform in which to report, investigate or inform the public of any professional misconduct cases among social workers. The lack of making the public aware of social work misconduct is further reinforced by allegations or final dispositions rarely (if ever) being reported in the mainstream news; thus, there is no public discourse shaping the regulation of the profession.

National social work associations and organisations are working to bring more solidarity to the social work profession through standardised codes of ethics to guide professional conduct (NASW, 2017) and through standardised regulatory procedures. For example, the Association of Social Work Boards (ASWB) has developed the Model Social Work Practice Act to assist state legislators and social work boards to regulate social work in a more consistent manner, whereby the 'Model Act establishes standards of minimal social work competence, methods of fairly and objectively addressing consumer complaints, and means of removing incompetent and/or unethical practitioners from practice' (ASWB, 2015, p. 1). It is interesting to note the absence of 'protection of the public' in this approach, so central in England's structure. But until such models are adopted across the fifty states and DC, there will continue to be variations in definitions of social work, title protections, requirements for registration and regulations of the social work profession based on state jurisdiction.

Case study 3: New Zealand

Structure

Recent amendments to the New Zealand legislation, passed in March 2019, have provided for mandatory registration and protection of title for social workers. This replaces the former arrangement in which registration by the Social Workers Registration Board (SWRB) under the Social Workers Registration Act 2003 (hereafter SWRA or 'the Act') was voluntary, unless required by employers as in statutory social work, public health services and some agencies providing services to children and young people. A public register is maintained by the SWRB, which is a crown entity, reporting to the parliament through a cabinet minister. To maintain the right to practice, social workers will hold a practicing certificate, renewed each year. Eligibility to register requires a recognised New Zealand social work qualification, a four-year Bachelor of Social Work or a two-year MSW, both of which require minimum days of supervised field education. All social workers have to meet a minimum number of hours of Continuing Professional Development (CPD) and maintain a CPD log which may be audited.

The Social Work Registration Act 2003 established a disciplinary tribunal and in the document 'Procedures for dealing with Complaints and Notifications of Concern' (Social Workers Registration Board (SWRB), 2017), the policy and procedures for dealing with complaints are set out. Notifications of concern can raise questions about a social worker's conduct, competence or fitness to practice (health/ reputation). Any person can raise a concern and employers are encouraged to involve the

SWRB, where a registered employee has been dismissed for any reason, resigned from their employment prior to disciplinary action or full investigation, been the subject of disciplinary action or an investigation; or there are significant health and/or competence concerns.

Narrative

The registration of social work in New Zealand was introduced in 2003 by the labour government. Criticism of social work, arising from public alarm about a series of child abuse tragedies, led to legislation to set up limited registration (Connolly and Doolan, 2007). The Social Workers Registration Act was passed in 2003 with widespread support from practitioners and most employers. For a detailed account of the history of this process, see Hunt (2016, 2017). New Zealand thus followed a pattern found elsewhere—in the UK, for example, where registration occurred at about the same time and in a similar climate (Kirkham *et al.*, 2019).

The New Zealand Health Practitioners Competence Assurance Act (HPCA) was also passed in 2003, set up to protect the safety of the public by ensuring that registered health practitioners are fit and competent to practise. The social work legislation was developed with the HPCA in mind, but the non-mandatory nature of social work registration meant that all health social workers were not legally required to be registered at this time, although a ministerial intervention meant that all social workers worked in directly government-funded health services were expected to register. The 2007 review made significant recommendations including legislative amendments to the SWRA 'to provide for a comprehensive system of social worker registration through protection of the title "social worker" and by requiring that functions normally performed by social workers cannot be performed by unregistered persons' (SWRB, 2007, p. 13), although these recommendations were not acted upon for ten years. At the time of writing, amendments to the SWRA have just passed into law (March 2019). The Social Workers Registration Legislation Bill was written to raise the professionalism of social work by increasing the coverage of the regulatory regime, ensuring social workers are competent and fit to practise and increasing the effectiveness and transparency of the way the SWRA works. The long-awaited changes in the new legislation include the shift to mandatory registration and protection of title.

The path to the amended legislation was not smooth. The Aotearoa New Zealand Association of Social Workers (ANZASW) and other bodies and individuals provided written and oral submissions on an earlier iteration of the amendment Bill, which had been greeted with consternation. In a letter to members, urging them to lobby the Minister,

the ANZASW summed up a major concern held by many, that as it stands 'the Bill will only require practitioners in paid or voluntary roles that are described using the words social worker to be registered and hold a current Annual Practicing Certificate' (ANZASW Submission, April 2018). The source of the concern was the 'Definition of Practicing as a Social Worker' in Section 8 (new clause 6AAAB). In this section, registration was only required if a person is in a position that is described using the words social worker or the person identifies themselves as a social worker, a definition that was feared to overly empower employers to determine whether or not a person is a social worker by manipulating job titles. Professional groups expressed significant concern that the legislation rather than strengthening the profession would divide into two distinct groups of practitioners: Registered social workers and qualified social workers employed in roles described as social work who would be required to register and accountable to the SWRB, and a second group of unregistered but qualified practitioners, who are employed in a non-social work designated role but who are indeed practicing social work. The final version of the legislation, developed with considerable input by social work professional bodies, has alleviated these concerns and set in motion work to develop a full scope of practice to ensure social work roles and tasks are clearly defined.

Registration, the qualifications and competencies for practice remain an area of contention in the social work profession in New Zealand. A review of social work education is likely to be initiated in the next twelve months and again is likely to raise many competing views (see Hunt *et al*., 2019 for the history of regulation of qualifications in New Zealand). Hobbs and Evans (2017) note that 'Government is not a passive player in the construction of social work identity', noting that government has a role to play in actively targeting 'ongoing negative media attention and be seen to be taking action to improve the standards of practice for social workers' (p. 21). However, they note despite recent developments, the long-standing reluctance of the New Zealand government to adopt mandatory registration for social workers has undoubtedly had an impact on both public perceptions of social work and social work identity.

Analysis

This article has sought to enhance our understanding of social work regulation through the lens of CPA and, specifically, through attention to its four 'rules': an awareness of 'context', 'clarity' (of purpose), meaningful comparisons through shared 'definition' and sensitivity to the 'constellations' of values, politics and institutions that shape such a policy (Marmor, 2017). Our three case studies have, through their depiction of

both structure and narrative across approaches in England, the USA and New Zealand, presented a firm base of 'context', which affords us an opportunity to help shape our understanding in relation to the remaining three 'rules'.

Clarity and risk

One element of clarity that appears to be particularly at the forefront of understanding comparative social work regulation is in the differing constructions of risk management which have shaped its purpose, form and actions. Recent years have seen a range of theories and commentaries that examine the management of risk in regulatory function (Gunningham *et al.*, 1998; Majone, 1999). Authors such as Hood *et al.* (2001) layout the development of 'risk regulation regimes', whilst Black (2005), considering financial service regulation, for example, connects the narratives of new public management with risk-based approaches to regulation that perhaps form an attempt to control the uncontrollable by seeking to, 'emphasise homogeneity and commensurability rather than variability and uniqueness, and (are) designed to be a framework for the systematisation and enhanced rationalisation of the regulatory process and, as such, an important tool of management control' (Black, 2005, p. 538). The constructed expression of risk management and the 'protection of the public'—is a central tenet and common facet of regulation across a wide variety of professions. Vogel (2012) argues that changing configurations of private and public pressures, particularly in response to public scandals and tragedies, can help explain changing patterns of risk governance. Certainly, in the case of England and New Zealand, there are clear links between regulator shifts in social work and cases such as those of Peter Connolly and Victoria Climbié (see, for example, Stanley and Manthorpe, 2004)—and, by exclusion, perhaps this is one of the reasons we see less volatility in regulation in the USA. Hood's (2011) memorable phrase of 'blame prevention re-engineering' summarises how regulatory regimes across a range of public spheres are designed with the intention of covering someone's (or the executive's) back. For social work, in particular, it is noticeable that the concept of risk not only has meaning for the central purpose of regulation but also helps shape its operation as a regulator. Rothstein *et al.* (2013) examine patterns of risk-based governance in Europe across a wide variety of professions and work areas exploring how such risk-based approaches are used as a way of 'rationalising the management of the puzzles, conflicts and trade-offs that inevitably constrain governance interventions' (p. 216). They continue by arguing strongly that regulation and the management of risk are not simply about public protection—but about the management of risk to central government and the avoidance of blame. For them, risk

becomes the euphemistic replacement for failure. Thus, when seeking to understand social work regulation structures, its attitude towards (and expression of) risk management strikes us as a key element to clarify.

Definition

The second rule and strand of understanding are one of the definition—and, as the first principle, what we mean by 'social work'. Hussein (2011) in a comprehensive study looking at social work regulation across Europe found 'extreme diversity' in the construction of social work—and, concomitantly, the regulatory infrastructure where it existed. A key feature for Hussein was that social work across Europe was located within a wide variety of professional groupings, in some countries being united under one banner but others where social workers were located in a multitude of different professional groupings. We can see this in the situation of New Zealand where the definition of social work—and who controls it—is a key contemporary issue. Less so in England where legislative imperatives are arguably less disputed—but clearly centrally controlled. In a parallel sense, we can also see evidence within the USA of how the location of social work in different groupings has led to significant differences of public perception, how different definitions of role and function have led to a fragmentation of regulation but also how qualification to some extent defines the regulated role more than the act. Viewed as either an act, role or qualification, social work clearly takes on many forms across international boundaries. However, from a regulatory perspective, the individual is the one located on any register (as opposed to an employer). In such a situation, the control over the definition of the role has an inextricable link with identity and professional strength. Whilst not explicit within the case studies, our central use of notions of power are to be found in the understanding of professional power—and specifically the individual social worker, especially in relationship to employer's and central stakeholders' control over their role. One of the issues we have not focussed upon, but wish to note, is that, that from our perspective, whilst England appears to be making headway with integrating the service user voice, it is largely missing from the regulation and narratives of social work education in the USA (see, e.g. Robbins *et al*., 2016). The involvement of service users in New Zealand is also limited with the exception being the involvement and consultation of Māori, which is not just desirable but required under the Treaty of Waitangi and SWRA legislation. Thus, the extent to which service users' voice and involvement helps define and shape the regulation and future direction of social work practice across the three case studies is significantly varied and linked to the role that 'public interest' plays in this policy area.

Constellations and public interest

The third and final rule are concerned with a sensitivity to the values, politics and institutional elements that shape (regulatory) policy and follows directly from our concern with both professional strength and public interest. Looking more broadly across our case studies, we have struggled in correctly locating the construction of 'public interest'. Horowitz (1980) was one of the early authors to examine regulation and to what extent it was done in the public interest—or the professions. There is clearly a link between regulation and the occupation's journey to the profession as more groups lobby for privileges in their quest for professional status. We can detect, in New Zealand's experience, a claim from the profession for regulation as part of an appeal for greater status. Equally, we could perhaps argue that the limited professional status of social work in the USA is linked to its limited regulatory control. Adams (2016) broadens this approach and examines how regulation draws its shape from the different interests of a profession, legitimate social governance and the benefit to society more generally. How, she asks, do we differentiate between regulated professions as part of a state system and their own professional gain—or is regulation to benefit the public and society more generally? As central government seizes its role in effective social governance, it expands regulation but, in turn, this creates concern over costs and efficiencies—and therefore public interest takes on an economic element. In England, the sheer cost of fitness to practice regulation (focusing on a small percentage of the register) ensures the efficient control over those costs is fundamental to delivery of the whole regulatory framework. Adams (2016) further notes the decline in general of professional esteem (expert advice is suspect) leading to an oppositional relationship between public interest and the profession's interest. Influential state actors, it is argued, listen more to business leaders, economists and consumer pressure groups and are less open to the claims of professional groups. Taking New Zealand as an example (but arguably England, too), our case study suggests that there may well be an economic argument currently influencing the definition of social work and its regulation. If employers (or government) are able to dictate what social work 'is' and therefore what will and will not be regulated, then this allows the space to develop where hitherto social work tasks are relocated into lower-ranking (lower paid?) work roles outside of regulatory oversight. In New York, we see how the broad, multi-professional regulatory architecture hides (almost removes) the social work profession from the public gaze and links to both a range of social work tasks apparently delivered by unregulated professionals and a far-reduced emphasis on protection of the public.

Conclusion

Within a necessarily brief, CPA approach, we have explored three different structures and narratives of social work regulation with a view to better understanding England's and others recent experience—and illuminating elements of a shared understanding about its forms around the world. In doing so, we have identified three key indices of risk, definition and public interest linked to our CPA model that can be deployed in future analysis and examination of regulatory shifts and structures. The pervasive narratives of managerialism and risk management appear to be creating an impetus towards a framework and colour of regulatory control around western social work that may not be sympathetic to the complex nature of the professional role. We have seen evidence of how volatile and fluid this particular policy space can be given its susceptibility to publicity—but also, where this is not necessarily a given, what can be lost. The underpinning nature of the relationships between the regulator, the public and the profession is both complex and changing—and subject to their respective interests. Meanwhile, in other countries, regulation is something the profession is still actively pursuing as it takes its journey to cement professional status. Comparison, we have argued, lies at the heart of policy analysis and we would suggest examining closely the experiences of countries at all stages on this road, to take learning about the advantages and disadvantages of different social work regulatory forms.

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The British Journal of Social Work (2020) **0**, 1–19
doi: 10.1093/bjsw/bcaa079

Protecting the Public? An Analysis of Professional Regulation—Comparing Outcomes in Fitness to Practice Proceedings for Social Workers, Nurses and Doctors

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Abstract

The regulation of professional activity in the Health and Social Care sector in the UK is carried out by a number of statutory bodies that hold legal mandates to manage the risks of professional malpractice. The prime method used to perform this duty, and thereby protect the public, is the construction of a register of the suitability qualified—and creation of appropriate professional standards to establish a benchmark for practice. When registrant's performance or conduct is felt not to meet these standards, they are placed within a fitness to practice process administered by the regulatory body. This article examines the publicly available data on fitness to practice cases from UK regulatory bodies relating to the professions of social workers, nurses, midwives and doctors. Examining nearly 1,000 cases, the authors run a statistical analysis of the data to establish whether any differences are found amongst and between these professional groupings. We find there are several areas where significant differences arise, namely gender, attendance and representation. Most of these regulatory bodies are, in turn, regulated in the UK by the Professional Standards Authority (PSA), and the article concludes by suggesting ways forward for the PSA in addressing or further examining apparent inequalities. The analysis is placed within a wide range of

BASW
The professional association for social work and social workers
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literature, with an emphasis on the international transferability of the approach to professional regulation.

Keywords: Professional practice, risk, regulation

Accepted: May 2020

Introduction

One of the interesting features of the growth of modern professions is their relationship to—and reliance on—statutory regulation of their function as a necessary, if not sufficient, element of asserting professional status. The spheres of professional control that result from knowledge monopolies and gatekeeping activities have a direct link to state legitimatised function, protection of title and regulation. Seeking validation, professions trade independence for social governance and become more accountable (Brint, 1993; Freidson, 1994). Adams (2016) expands this thinking as she examines how, in turn, regulation becomes shaped by professional interest, legitimised social governance and broader benefits to society. In a parallel discourse, authors such as Beck (1992) and Harmon *et al.* (2013) have conceptualised the 'risk society' where the ubiquitous nature of risk of harm places individuals in a perpetual state of 'uncertainty' requiring risk mitigation responses from legal and other institutions. In areas of health and social care, the complexity of the statutory function, based within human, multifaceted, value based and essentially uncertain relationships, makes this a difficult task. How does one control the uncontrollable? The result tends to be complex, costly structures and processes—'risk regulation regimes' (Hood *et al.*, 2001), which appear to take on a life of their own as they simplify complexity in an effort to exert control over risk. The central tenet of many regulatory regimes, certainly those in the health and care sector, is the protection of the public through the management of professional risk. But in whose interest does regulation really operate: the profession, the public or the regulator themselves? (Horowitz, 1980).

One illustration of this process in the UK's health and social care sector is the presence of large scale, regulatory bodies that directly manage professional risks to the public around the roles of social worker, nurse, midwife and doctor. The Health and Care Professions Council (HCPC) the Nursing and Midwifery Council (NMC) and the General Medical Council (GMC) have legally mandated functions to regulate their respective professions and form registers that govern the conduct and activity of over one million professionals in the UK. A new body named 'Social Work England' took over sole responsibility for social work in December 2019. The authors of this article have previously examined various elements of

the regulation of the social work profession in UK and globally (Worsley *et al.*, 2020), along with the legal fairness of the fitness to practice (FTP) process (Kirkham *et al.*, 2019). One of the questions raised by our research—and the aim of this article—was to assess the comparability of the registrant's experience within different regulatory regimes and to attempt to understand any differences that appear. Was, for example, the social worker's experience of regulation similar to that of the nurse? The authors have sought to answer that question by comparing one element of regulation through publicly available data—namely FTP proceedings, which refer to a model for investigating the behaviour of practitioners against professional standards. Regulatory bodies construct, typically, committee panels to consider evidence of misconduct and/or competence that might relate to behaviour, such as failing to conduct appropriate relationships, fraud or keeping accurate records. Sanctions are available to these panels that rise from admonishments through to removal from the professional register—which, therefore, prevents the professional from working in that role under its protected title. This research has discovered considerable disparities between the professions, especially around gender equality. In turn, questions arise regarding the need for moderation within and amongst these regimes. This research, although exclusively concerned with data emanating from the UK, raises questions that can and ought to be asked in broader international contexts whilst also providing a methodology for the analysis of relevant data. We acknowledge that the very different histories of these professional groupings may affect direct comparability. We note the GMC was established in 1858 to regulate an already very 'mature' profession. The regulation of nursing (1919) and, much later, social work (2001) are arguably relatively 'modern' professions. Notwithstanding these differences, one of the main rationales for our selection of these professions was their shared relationship with the Professional Standards Authority (PSA). The PSA is the 'regulator's regulator' and was given a legal mandate for that role through the National Health Service Reform and Health Care Professions Act (2002). Their function is to, 'protect the public through work with organisations that register and regulate people working in health and social care' (Professional Standards Authority, 2019). This article will examine relevant literature before presenting a range of data illustrating differences between the professions and discussing some potential explanations for these differences. We then briefly examine the opportunities for the PSA to create greater fairness for registrants whilst also enhancing the protection of the public.

Literature review

The twentieth-century saw an increase in occupations seeking to become recognised as professions with their own knowledge base and

concomitant expertise. These developments ran parallel with increased attempts for some form of regulation to be put in place to ensure good practice and exert some form of control over professionals. Initially, this tended to be in the form of self-regulation by the professions themselves (Schön, 2001), but in recent years, there has been a growing trend for external regulation of many professions. Furthermore, analysis of several established profession's journey to regulation across Europe highlights how national differences in those themes have diminished over time (Malatesta, 2011) and internationally, one can identify a range of broadly similar regulatory processes in place, although, the degree of self-regulation or administration via professional boards can differ (Byrne, 2016; Beddoe, 2018; Worsley *et al.*, 2020). Whilst an increase in external regulation of the professions has been broadly welcomed, some criticism has emerged (Furness, 2015; Leigh *et al.*, 2017). Indeed, the very concept of external regulation has provoked much debate and disagreement amongst professional bodies themselves. Such contestation has mainly arisen from a fear of external regulations reducing professional autonomy (McLaughlin, 2006; Haney, 2012). These objections have been countered with the argument that self-regulation could allow professional self-interest to override the public interest (Schön, 2001).

As social workers in UK engage with a third regulatory body in 7 years, their profession is at an interesting juncture and one that, perhaps, raises timely questions about comparisons between sister professions across health and social care. Each regulatory body publishes an Annual 'Fitness to Practice' report, albeit in slightly different formats that inhibit direct comparison, which suggests widely differing rates of referral for FTP proceedings. Considering the most recent of these we find that social work (in UK) from a register of approximately 96,000 has a 'cases received' rate of 1.42 per cent of the register (HCPC, 2019b). In comparison, the GMC register of doctors carries some 300,000 and has a 'referral' rate of 0.02 per cent of the register (GMC, 2019b). Finally, the NMC has a register of around 700,000 (650,000 of which are nurses) and deals with a 'referral' rate of 0.08 per cent, i.e. 8 in 1,000 (NMC, 2019). Whilst available data cannot detect if there are different 'thresholds' to proceedings at play, clearly, these figures suggest very different experiences and exposures to FTP regulation across the professional groupings that merits exploration.

Data source

Data included in this research were gathered from the six professional bodies that regulate social workers, doctors, nurses and midwives in the UK, with each regulatory body having their own specific website. Within the UK, each of the four nations has their own professional social work

body. The HCPC regulated social workers in UK during our period of study, with Social Care Wales (SCW), Northern Ireland Social Care Council (NISCC) and Scottish Social Services Council (SSSC) preforming their respective regulatory functions for the profession. We acknowledged above the significant differences between the professional histories and, indeed, contexts of social work in the four countries—but offer the data to form a complete picture of the UK. As mentioned earlier, doctors in the UK must be registered with the GMC, whilst UK nurses and midwives must be registered with the NMC.

All six professional regulators have their own FTP process where practitioners, whose behaviour falls below professional standards, are at risk of being referred to their profession's relevant committee. All six professional bodies regularly publish such hearings online. For HCPC registrants, these concerns are heard by the Health and Care Professions Tribunal Service (HCPTS), with outcomes being documented on their website. Between 1 January 2018 and 1 January 2019 (our period), social workers were linked to 150 final hearing FTP cases, with the researchers downloading all cases. SCW has a dedicated FTP section on their website, with information relating to the hearing process, upcoming hearings and the outcomes of past hearings being presented. For this research, hearings that occurred during our period and identified a registrant's role as either social worker or qualified social worker were manually selected, resulting in five hearing outcomes being identified and downloaded. Hearings and decisions relating to social workers, social care workers and social work students in Northern Ireland are stored on the NISCC website. The inclusion criteria for NISCC cases was that it involved a registrant on the social worker part of the register, with the case being active or occurred during our period. Based on this criterion, two hearings were found with only one case available for download. For SSSC cases involving a social worker, with an effective outcome in the chosen time period, fifteen cases were identified with all cases downloaded by the researchers.

GMC FTP hearings are heard by the Medical Practitioners Tribunal Service (MPTS), with recent tribunal decisions and upcoming hearings being presented on their website. However, MPTS only publishes decisions that ended within the last 12 months. Data that relate to GMC registrants were obtained in January 2019, enabling the researchers to access all cases that occurred during our period during which 381 decisions were published by MPTS, with the researchers able to download 83 per cent of these cases ($n = 317$). Finally, FTP hearings and sanctions for nurses and midwives are accessible via the NMC website. Significantly, the NMC website only publishes outcomes and sanctions that have been made in the last three full months. Individual outcomes are listed indefinitely but need to be searched for using a registrant's name or pin. At the time of identifying NMC cases (mid-January 2019),

data were only available for November and December 2018 yet 276 cases were accessible with researchers able to download 72 per cent ($n = 200$). The authors request to access the NMC data across our period was refused. We appreciate that this incomplete data set inhibits full comparison across the selected timeframe and, therefore, are conscious throughout that our findings are best thought of as indicative and suggestive of further areas for research and analysis.

Based on the criteria that FTP hearings and or decisions had to occur between 1 January 2018 and 1 January 2019, a total of 830 cases were recorded by all six professional bodies or tribunals. Of these 830 cases, the researchers were able to download 83 per cent of case files and outcomes ($n = 688$). To ensure the final analysis was representative and manageable, the researchers decided to analyse 50 per cent of all downloaded cases per professional body. If there was odd number of cases, then the number of cases analysed was rounded up, resulting in 348 cases being included in the final analysis.

Data analysis

Content analysis was used to analyse the information contained within the chosen cases. In its broadest sense, content analysis refers to the process of transforming raw qualitative data into a standardised form (Kohlbacher, 2006). Content analysis involves the subjective interpretation of data (Hsieh and Shannon, 2005), with researchers having to systematically code data, before identifying themes or patterns. For this study, a conceptual content analysis was chosen, enabling the existence and frequency of a concept to be quantified. To assist with the identification of concepts, a coding framework was developed, with codes being associated with pre-determined categories of interest.

Within the UK, the PSA has a legal responsibility to regulate nine health and care regulators, with HCPC, GMC and NMC falling under the PSA remit. To reflect the role of the PSA and to capture regional variance, social work FTP cases were split into two groups: PSA regulated social workers (HCPTS cases) and non-PSA regulated social workers (SCW, NISCC and SSSC). Doctors (MPTS cases) and nurse/midwife (NMC cases) formed two other distinctive groups. By analysing the data in this way, the fairness of processes between professional backgrounds could be explored, alongside identifying any differences between PSA and non-PSA regulated regulators—although the limited numbers of the latter limit strong conclusions. To determine the gender of the registrant (not recorded by the regulatory body), codes were based on the name of the registrant, alongside the pronouns used in the body of the case. Explicit terms were used to code the registrants professional background and professional body. Codes relating to the registrant attending their

hearing were based upon a case clearly stating that the registrant attended or did not attend. A similar process was applied to the registrant being legally represented, with a 'Yes' code being attributed to cases explicitly reporting the presence of legal representation, whilst a 'No' code was applied to cases were the absence of legal representation was recorded.

The outcome of a hearing was generally explicitly recorded on a case, with the researchers using these outcomes to code the data. The rationale for an outcome was also captured within the content analysis. Within a case, multiple reasons for an outcome were typically reported, with the researchers grouping reasons into broad themes. Therefore, whilst cases only appear in one category, there was the potential for some cases to have identified additional reasons. A primary purpose of publishing FTP cases is to provide transparency between regulators, registrants and the public, not to assist with academic research. Therefore, whilst cases provided a wealth of information, the consistency and depth of information recorded often varied. Subsequently, not all cases clearly reported information of interest, causing gaps in knowledge to emerge. In these instances, an 'Unknown' variable was created, with this variable being omitted from the final analysis.

To assist with the content analysis, the coding framework was designed in Excel, with the same researcher reading and coding all 348 cases. To calculate inferential statistics, the completed, coded Excel spreadsheet was transferred to SPSS, allowing the interaction between the various variables to be identified. Data were normally distributed, enabling parametric tests to be used. Chi-square tests were used to investigate categorical data, whilst one-way analysis of variance tests were used to explore interval data that had three or more levels to the independent variable. Ethical approval to conduct this research was obtained from the University of Central Lancashire's ethics committee.

Findings

Overview of FTP cases

Of the 348 FTP cases analysed, 46 per cent related to doctors ($n = 160$), with nurses /midwives accounting for 29 per cent of cases ($n = 100$ with nurses comprising 95 per cent of those cases). PSA regulated social workers were linked to 21 per cent of cases ($n = 74$), whilst non-PSA regulated social workers represented 4 per cent of the cases analysed ($n = 14$) (Table 1). Over half of FTP registrants (henceforth 'registrants') were male ($n = 210$, 60 per cent), with a significant association between a registrant's gender and professional background being found ($\chi^2(3) = 96.081$, $p < 0.001$, Cramer's $V = 0.525$). PSA regulated social workers

Table 1. Summary of all FTP cases by professional background.

Variable	Professional background				
	PSA regulated social workers, *n* (%)	Non-PSA regulated social workers, *n* (%)	Doctors, *n* (%)	Nurse/midwife, *n* (%)	All professions, *n* (%)
Gender*	*N* = 74	*N* = 14	*N* = 160	*N* = 100	*N* = 348
Female	41 (55)	7 (50)	20 (12)	70 (70)	138 (40)
Male	33 (45)	7 (50)	140 (88)	30 (30)	210 (60)
Registrant attended[a,]*	*N* = 40	*N* = 1	*N* = 158	*N* = 97	*N* = 299
Yes	3 (7)	1 (100)	113 (71)	45 (46)	162 (54)
No	37 (93)	–	47 (29)	53 (54)	137 (46)
Legally represented[a,]*	*N* = 17	*N* = 1	*N* = 160	*N* = 96	*N* = 274
Yes	1 (6)	1 (100)	93 (58)	39 (41)	134 (51)
No	16 (94)	–	67 (42)	57 (59)	140 (49)
Mean number of allegations[a]	15 (SD = 13.66)	21 (SD = 22.38)	14 (SD = 17.26)	10 (SD = 8.54)	14 (SD = 15.08)
Type of allegation[a]	*N* = 74	*N* = 14	*N* = 159	*N* = 63	*N* = 310
Misconduct	57 (77)	12 (86)	114 (72)	40 (63)	223 (72)
Caution/conviction	11 (15)	–	33 (21)	11 (17)	55 (18)
Lack of competence	6 (8)	2 (14)	11 (7)	9 (14)	28 (9)
Ill health	–	–	–	3	3 (1)
Determination of other regulator	–	–	1 (<1)	–	1 (<1)

*$p < 0.001$, [a]Unknown cases removed.

($n = 41$, 55 per cent) and nurse/midwife ($n = 70$, 70 per cent) registrants were most likely to be female, whilst 88 per cent of doctors were male ($n = 140$). When these figures were compared with the gender breakdown of the professional registers, it was found that male registrants were overrepresented within the cases. On UK social work registers, men account for ~17 per cent of all registrants (NISCC, 2017; SCW, 2018; HCPC, 2019b), yet 45 per cent of PSA regulated and 50 per cent of non-PSA regulated social worker cases involved male registrants. Equally, on the GMC register, 54 per cent of registrants are male (GMC, 2019a), with this study finding that 88 per cent of FTP cases investigated identified a male registrant. This trend was also replicated for nurses and midwives. Around 11 per cent of registrants are male (NMC, 2018); however, males accounted for 30 per cent of cases analysed. Thus, it could be argued that in relation to the gender breakdown of professional registers, men are at an increased risk of being referred to a FTP process compared to their female counterparts.

Most cases explicitly stated whether the registrant attended their hearing ($n = 299$, 86 per cent), with doctors ($n = 113$, 71 per cent) significantly more likely to attend their hearing compared to PSA regulated social workers ($n = 3$, 7 per cent) and nurses/midwives ($n = 45$, 46 per cent) ($\chi^2(3) = 56.080$, $p < 0.001$, Cramer's $V = 0.433$). Equally, doctors ($n = 93$, 58 per cent) were significantly more likely to be legally represented than PSA regulated social workers ($n = 1$, 6 per cent) and nurses/midwives ($n = 39$, 41 per cent) ($\chi^2(3) = 21.714$, $p < 0$ .001, Cramer's $V = 0.282$). These findings suggest that out of the three professional backgrounds, social workers are most likely to not attend their FTP hearing or be legally represented.

The main type of allegation, regardless of professional background was Misconduct ($n = 223$, 72 per cent), followed by a caution/conviction ($n = 55$, 18 per cent), implying that regardless of professional background, hearings are addressing behaviour of a similar nature. Although, the association between professional background and type of allegation was non-significant ($\chi^2(12) = 20.828$, $p > 0.05$, Cramer's $V = 0.150$).

Outcome of FTP cases

Nearly a third of all FTP cases ($n = 112$, 32 per cent) resulted in an outcome of suspension or interim suspension (Table 2), with the relationship between professional body and outcome being significant ($\chi^2(27) = 170.355$, $p < 0.001$, Cramer's $V = 0.407$). Compared to the other professional backgrounds, PSA registered ($n = 23$, 32 per cent) and non-PSA registered ($n = 8$, 57 per cent) social workers were most likely to have been removed from their professional register. Conversely, doctors ($n = 60$, 38 per cent) and nurses/midwives ($n = 34$, 34 per cent)

Table 2. Outcome of all FTP cases by professional background.

Variable	Professional background				
	PSA regulated social workers, *n* (%)	Non-PSA regulated social workers, *n* (%)	Doctors, *n* (%)	Nurse/midwife, *n* (%)	All professions, *n* (%)
Outcome[a,]*	*N* = 72	*N* = 14	*N* = 157	*N* = 100	*N* = 343
Suspension	18 (25)	–	60 (38)	34 (34)	112 (33)
Erasure/removal/struck off	23 (32)	8 (57)	38 (24)	29 (29)	98 (29)
Conditions	5 (7)	2 (14)	18 (11)	33 (33)	58 (17)
Adjourned	15 (21)	–	5 (3)	–	20 (6)
No action	2 (3)	–	14 (9)	1 (1)	17 (5)
Condition/suspension Revoked	–	–	13 (8)	–	13 (4)
Caution	9 (13)	–	–	3 (3)	12 (4)
Warning	–	4 (29)	4 (3)	–	8 (2)
Restoration not granted	–	–	4 (3)	–	4 (1)
Restoration	–	–	1 (<1)	–	1 (<1)
Rationale for outcome[a,]*	*N* = 56	*N* = 13	*N* = 157	*N* = 64	*N* = 290
Evidence of remediation/insight/remorse	9 (16)	1 (8)	51 (32)	7 (11)	68 (23)
Failure to remediate/insight/remorse	8 (14)	3 (23)	27 (17)	12 (19)	50 (17)
Time for remediation/insight	8 (14)	–	26 (17)	13 (20)	47 (16)
Seriousness of allegation	18 (32)	6 (46)	23 (15)	11 (17)	58 (20)
Allegations not proven	1 (2)	–	9 (6)	1 (2)	11 (4)
Disregard for rules	–	1 (8)	9 (6)	9 (14)	19 (7)
Public safety	10 (18)	–	8 (5)	6 (9)	24 (8)
Case not yet concluded	1 (2)	–	4 (3)	4 (6)	9 (3)
Voluntary removal agreed	1 (2)	1 (8)	–	–	2 (<1)
Other	–	1 (8)	–	1 (2)	2 (<1)

*$p < 0.001$, [a]Unknown cases removed.

predominantly received a suspension, implying that FTP hearings are more punitive towards social workers than doctors or nurses/midwives.

Of those cases that provided a rationale for an outcome ($n = 290$, 83 per cent), a significant relationship between professional background and rationale was found ($\chi^2(27) = 75.255$, $p < 0.001$, Cramer's $V = 0.294$). The dominant theme associated with PSA regulated ($n = 18$, 32 per cent) and non-PSA regulated ($n = 6$, 46 per cent) social workers outcomes was to reflect the 'seriousness of allegation'. For doctors ($n = 51$, 32 per cent), the primary rationale for an outcome was related to the registrant evidencing remediation, insight or remorse, whilst in 20 per cent of nurse/midwife cases ($n = 13$), the reason for an outcome was linked to allowing the registrant 'time for remediation/insight to develop'. Based on the findings, it could be argued that social work decisions were more concerned with what had occurred, whereas GMC and NMC decisions tended to acknowledge a registrant's ability to learn from their mistakes and make amends. Across the three professions, therefore, social work regulatory activity may place more emphasis upon public protection, whilst the GMC and NMC may be more willing to consider a registrant as a public asset, who can change their ways.

Removal cases

To explore the notion that FTP processes may be more punitive towards social workers, the researchers conducted a separate analysis of those cases that resulted in a registrant being removed from their register. Of the 98 removal cases, doctors accounted for 39 per cent of registrants ($n = 38$), with over a fifth of cases relating to nurses/midwives ($n = 29$, 30 per cent). PSA regulated social workers represented 23 per cent of removal cases ($n = 23$), whilst 8 per cent of cases involved non-PSA regulated social workers ($n = 8$).

PSA regulated social workers ($n = 15$, 65 per cent) and nurses/midwives ($n = 21$, 72 per cent) were significantly more likely to be female, whereas non-PSA regulated social workers ($n = 5$, 63 per cent) and doctors ($n = 35$, 92 per cent) were predominantly male ($\chi^2(2) = 32.23$, $p < 0.001$, Cramer's $V = 0.574$). Male social workers and doctors were again overrepresented within removal cases. Over a third of PSA regulated ($n = 8$, 35 per cent) and 63 per cent of non-PSA regulated ($n = 5$, 63 per cent) social workers, who were removed from their professional register, were male. This contrasts, as noted above, with ~17 per cent of UK registered social workers being male (HCPC, 2019a). On the GMC register, 54 per cent of registrants are male (GMC, 2019a), yet within this analysis it was found that 92 per cent of doctors ($n = 35$) removed from the GMC register were male. Likewise, 11 per cent of NMC registrants are male (NMC op. cit.) but accounted for 28 per cent of nurses/

midwives ($n = 8$) removed from their register, reinforcing the notion that compared to females, male social workers, doctors and nurses/midwives may be at an increased risk of not only being referred to FTP processes, but removed from their professional register. The association between removal cases, average number of allegations and professional background was also found to be significant ($F(3, 84) = 5.727$, $p < 0.001$). PSA regulated social workers ($M = 8$, SD = 6.04) and nurses/midwives ($M = 9$, SD = 9.34) were more likely to be removed from their professional register for fewer concerns, compared to non-PSA regulated social workers ($M = 26$, SD = 21.64) and doctors ($M = 23$, SD = 25.04). This suggests that concern thresholds may be lower for PSA regulated social workers and NMC registrants, than GMC registrants and non-PSA regulated social workers.

Finally, the rationale for an outcome was identified on 97 per cent of removal cases ($n = 95$), with the relationship between professional background and rationale for an outcome being significant ($\chi^2(8) = 16.28$, $p < 0.05$, Cramer's $V = 0.038$). Cases relating to PSA regulated ($n = 11$, 50 per cent) and non-PSA regulated ($n = 3$, 43 per cent) social workers mainly stated that a registrant had been removed due to the 'seriousness of the allegation'. This contrasts with the rationale identified for doctors ($n = 15$, 39 per cent) and nurses/midwives ($n = 10$, 36 per cent), with these cases typically implying that a registrant had been removed due to failing to 'evidence remediation, insight or remorse'. This suggests that the purpose of a FTP outcome differs across professional bodies, with social work regulators more likely to focus upon what has been done and public safety, whilst decisions relating to doctors and nurses/midwives are potentially more considerate of a registrant's ability to amend their behaviour and their value to the public.

Discussion

Fairness

Our analysis clearly demonstrates significant differences between and within the professions on several variables that appear to raise questions about the fairness and consistency of the FTP process. However, this discussion must first recall the indicative and limited nature of much of the data. It is important that we avoid monocausal explanations and this discussion therefore simply aims to raise questions for further study that arises from our data and one of the more salient is around gender. We are aware that professions are gendered institutions and many male-dominated professions have successfully deployed gendered strategies and ideologies to achieve professional dominance (Adams, 2003). Other authors have characterised female-dominated professions as 'semi-

professions' and examined how such roles can be subordinated or limited by male-dominated professions (Etzioni, 1969; Coburn, 1994). Such professional strategies employ gendered actors who can use gender as a criterion to determine access to skills and credentials—and what those skills and credentials are (Witz, 1992). Our chosen professions are notably different, with one 'traditional' profession—medicine—being the only one where registered males form a majority (albeit one that diminishes year on year (NHS, 2018)) joined, arguably, by two semi-professions that are substantially majority female. Yet, why are men in all three professions apparently at significantly greater risk of being referred to FTP proceedings and removed from the register? Relevant research to consider includes Simpson (2004), who looked at males in female-dominated professions and found that whilst men can benefit from a minority status, an 'assumed authority' could mean men were more likely to be expected to lead in challenging situations. Similarly, Lupton (2006) reports how masculinity can be 'exposed' when working alongside females and adopting 'female' roles. Tennhoff et al. (2015) examined the intersectionality of gender and professionalisation around men working in the field of early childhood. In such a setting, they argue, the image of the 'ideal worker' becomes feminine and one where men can be constructed as the 'unwanted other'. Tennhoff et al. (2015) found, albeit through a very limited sample, that strategic responses for male workers to become 'wanted' might include activity, such as taking on the role of 'pioneer' or emphasising the agency and autonomy of their role. With a different emphasis, Furness (2015) looked specifically at the higher rates of male failure in social work qualifying training and noted the 'suspicion of unsuitability' which can result in men having to work harder to prove their competence. Clearly, the interaction of gender identity, profession and activity are hard to capture and, in any event, would unlikely be sufficient to fully explain such a complex phenomenon. Finally, of course, whilst that might all be applicable to social work, nursing and midwifery, it less obviously relates to medicine, although that setting is also moving quite rapidly towards being a female-dominated profession.

We have argued elsewhere that there are numerous problems located within the 'thin procedural fairness' of FTP proceedings in social work, noting especially the blanket transposition of court-like models on to complex work environments that focus entirely on the individual and never on issues, such as organisational failure (Kirkham *et al.*, 2019). Furthermore, inadequately addressing this issue, we argued, undermines the integrity of the process. Similar arguments may well accrue in our other selected professions. On this theme, one of the features of the data is that which presents significant differences between the professions in terms of attendance and representation (legal and related) at FTP events—with large numbers clearly voting with their feet. The

differences are stark with 71 per cent of doctors in attendance (where this is mentioned) compared to only 7 per cent of social workers. Likewise, social workers are far more unlikely to be represented (6 per cent compared to nurses at 41 per cent). What this means for the fairness of the processes is, again, complex but what the data suggest are that there are significant differences between professions regarding access to and engagement with a fair, just process. Why might social workers attend relatively less? Cost may well be a factor as earlier primary research with social workers going through FTP proceedings indicated costs may run from £5,000 to £15,000 (McLaughlin *et al.*, 2016). Professional associations, related organisations and schemes offer varying forms of support for those going through FTP, but this is not a role the regulatory bodies adopt. We are aware that there are more mature organisational approaches to the provision of indemnity legal advice through professional association in the Royal College of Nursing and the British Medical Association than social work—perhaps with greater proportions of registered membership. One could argue, of course, that cost is more linked to representation than attendance. Ultimately, whatever the options for support, there are large numbers of professionals who simply are not attending their FTP process—with our data suggesting that in social work we are heading towards greater levels of disengagement. Whatever the reason behind this, the regulators must give serious consideration to what this says about the fairness and justice of their models.

Public interest and risk

This brings us to the question of the public interest and the protection of the public. We know that the public's level of trust in different professions varies—with nurses and doctors often rated most highly (IPSOS, 2019). Conversely, there is a wealth of research examining the continued (mis) representation of the social work profession in the media (see for example Jones, 2014). Our evidence suggests that different regulators operationalise different models of understanding how they protect the public. State legitimised professional, statutory and regulatory bodies (PSRBs) have the promotion of the public interest delegated to them through legislation (Veloso *et al.*, 2015). Authors, such as Hood (2011) refer to 'blame-prevention re-engineering' where risk management strategies develop to deflect blame. In this sense, for the government, PSRB's are arguably a risk management strategy—offering a way of diverting the high-profile risk issues related to professions and avoiding central, political blame. Indeed, the presence of a 'scandal-reform cycle'—can also greatly influence the character of these risk management strategies (Stanley and Manthorpe, 2004). The role of PSRB's in

navigating and interpreting the protection of the public is clearly complex and multi-faceted. Yet, it is interesting to reflect on how PSRB's construct an understanding of the 'public' they are seeking to protect. Is it based on the 'reality' of such risks, the media portrayal of those risks—or their interpretation of the government view of the seriousness of those risks? Nevertheless, our data suggest that the risks posed—or the perceptions of the risks posed—of breaches in standards by registrants from different professions vary significantly.

As can be seen, there are significant differences between professions on rates of removal from the register with social workers (32 per cent) being more likely to be removed than the other professions, such as doctors (24 per cent). This is also reflected in far greater use of conditional disposals attached to nurses (32 per cent) than social workers (7 per cent). One element of this difference is the apparent willingness of different FTP processes to engage more fully with concepts of remediation and remorse as rationales for disposal (especially noticeable with doctors), whereas for social workers the rationale was frequently around the seriousness of the matters being considered—with seriousness being used as a rationale for them more than twice the incidence as that for doctors. This is especially interesting when compared with the power these professions hold over the public. Clearly, social workers have significant, state legitimised, powers, such as removal of liberty—which might suggest they present greater 'risks' to the public who, therefore, have greater need to be protected from their malpractice. But do those risks really exceed those of nurses and doctors who's access to the physical person of the public is unparalleled across the professions?

Data transparency and moderation

In accessing this range of publicly available data and, where appropriate, triangulating it against FTP Annual reports, we have been struck by what the data does not show. Whilst it is understandable that the regulatory bodies' desire to remain transparent is aimed primarily at the public it purports to protect, it is also self-evident that its recording of FTP hearings is designed more for its own purposes. Thus, there are no expectations that we are aware of regarding some basic data set requirements that might dictate, for example, note of key issues, such as race, gender, age, representation and so on. FTP Annual Reports are typically quantitative analyses of the processing of cases through systems devoid of any content that amounts to learning from the individual cases (see for example HCPC, 2019b). And they certainly do not allow the public (or registrant) eye to gaze on whether their processes are equally fair regardless of demographic details, such as race, gender, age and so forth. How PSRB's address their legal obligations regarding the public-sector

equality duty is not clear in relation to this query, specifically around how they minimise disadvantage to those with protected characteristics (Equality and Humans Rights Commission, 2019). We also note the suggestion, from earlier research, that length of service and time on the register appears to be another relevant factor affecting outcomes that might usefully be the subject of further enquiry—where the more experienced staff are more likely to be involved in FTP processes (see Leigh *et al.*, 2017).

It seems appropriate at this juncture to reflect on the role of the PSA and whether there is a need for some form of moderation across the professions. Our data suggest there are significant differences between regulatory bodies in their implementation of FTP regimes which appear gendered and perhaps lacking some essential elements of fairness and justice, notably around attendance and representation. We hope the PSA considers these findings and deploys its legal authority to investigate the data more thoroughly than we are able. Yet, this is not simply a plea for registrants; there are genuine issues about prime purpose. The PSA considers at length, in several of its publications, the notion of 'upstreaming' whereby regulators are encouraged to use the data they gather to help avoid future risks—and reduce the incidence of non-compliance with standards—so as to prevent harm to the public (PSA, 2017). It could be argued that in failing to adequately upstream FTP data, the PSA is failing to protect the public, let alone the registrants. The apparent absence of this imperative suggests that it is the prosecution of the case that assumes far greater precedence (and commands far greater resource) than the protection of the public through learning from all these cases why something went wrong and preventing it from happening again.

Conclusion

This article has analysed a year's worth of publicly available FTP data from the professional regulatory bodies covering the roles of social worker, nurses, midwives and doctors. The function of the regulator in protecting the public and assessing the risks that registrants pose to them has been examined and questions have been raised specifically regarding significant differences between professions based on gender, attendance and representation. Taken as a whole, the data raise questions about fairness, consistency and equity across the professions regulated by the PSA, which may need to develop a moderative function to temper differences. Furthermore, we have argued that the PSA needs to do more with regards to 'upstreaming', utilising its greater access to this kind of data to 'prevent' incidents of malpractice—rather than focusing exclusively on the punishment of registrants. It is only through making

this conceptual shift that the PSA will truly be protecting the public it serves. The questions raised in this study are, we feel, applicable to a range of international professional regulatory activity and can be used to examine its fairness and transparency for the benefit of professionals and public alike.

Acknowledgements

The authors wish to acknowledge the financial support of the University of Central Lancashire, UK used to enable the recovery and analysis of the publicly available data used in this paper. UCLan had no role in the study design, collection and analysis of data nor in the writing of reports or submission of this paper to this journal.

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British Journal of Social Work (2022) **00**, 1–18
https://doi.org/10.1093/bjsw/bcac213

Moving the River: Rethinking Regulation in Social Work

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Abstract

Social work regulation in England has experienced a considerable period of change in recent years. The profession's latest regulator, Social Work England, faces similar challenges to sister professions—and to social work internationally—to improve and focus regulatory activity to better protect the public. In examining activity around poor performance and fitness to practice (FTP), the author explores the potential for shifting the emphasis of a regulatory gaze to practice before problems occur, rather than always dealing with the after-effects (known as 'upstreaming'). A case is also made for developing 'formative spaces'—where organisations might construct interventions to address professional performance before recourse to regulatory structures. To examine the readiness of organisational structures to take on this task, a series of qualitative, semi-structured interviews were undertaken with experienced practitioners. Thematic analysis of the data illustrates a range of current strategies for dealing with these issues. In conclusion, this article promotes the idea of shifting the balance of regulatory activity away from FTP areas to more positive, proactive endeavours that might better protect the public and help the profession manage the challenges faced by the complexity of contemporary practice.

Keywords: government, practitioners, professional development, regulation, social work

Accepted: October 2022

Introduction

Arguably the defining characteristic of social work regulation in England in the last ten years has been structural change. Since the inception of the General Social Care Council in 2001, the profession has gone on to be regulated by the Health and Care Professions Council (HCPC) from 2012 to 2019—and then from December 2019, Social Work England (SWE). In seeking to understand these changes, the author has examined (with others) various facets of this intriguing but often problematic journey, including policy analysis (McLaughlin *et al.*, 2016), fitness to practice (FTP) (Worsley *et al.*, 2017) and comparisons at international and interprofessional levels (Worsley *et al.*, 2020a,b). In examining the discourse surrounding these facets of social work regulation, the literature appears to possess two main weaknesses: firstly, it tends to look backwards to form an understanding of regulatory developments, with relatively rare forays into considering how things might change moving forward. Secondly, it tends to form part of academic or policy conversations that seldom consider the experience of practitioners and their practice. This article seeks to address both these weaknesses as it explores a potential new direction for regulation and how it might be received by practising social workers, particularly in the context of supervision and performance management. In exploring a way forward, the article will draw on two important concepts. The first is 'upstreaming', where the regulator shifts its gaze earlier on in the performance timeline and uses its extensive knowledge to take a more preventative (as opposed to reactive) approach to regulatory activity (McKinley, 1979, 1986). The second is of 'formative spaces', a concept develop by Fischer (2012) that advocates for the creation of organisational fora that informally manage the turbulence of contemporary professional practice. Although focused on the example of social work in England, UK, this examination will apply to many parallel structures of sister profession regulation and is keen to draw on a range of international literature examining parallel issues around the globe as it seeks to answer the question: can formative spaces and upstreaming enhance practitioners' experiences of regulation? This article will attempt to locate this discussion in contemporary practice with reference to a small number of in-depth interviews with experienced social workers exploring to what extent these new approaches to regulation are, or might be, implemented.

Why do we have regulation?

If one looks to the sociology of professions, we see a well-evidenced trajectory of numerous occupations, as they journey towards the status of profession and state legitimised function (e.g. Freidson, 1994; Malin, 2017). The 'award' of protected title will often come hand in hand with oversight by a regulator. However, the global social work profession is not at a single 'place' as far as this journey goes. Hussein (2011) is one of the few authors who have described the view across Europe on social work regulation, finding significant variation in the task and statutory responsibilities of social workers and thus of regulatory frameworks. In England, the social work professional register began in 2001. Elsewhere, New Zealand only introduced mandatory registration for social workers in February 2021, following a process charted by authors such as Beddoe (2016) and Hunt (2017). Not far behind is Australia where long fought for legislation is coming through at state level (see, e.g. McCurdy *et al.*, 2020). America's similarly state-based system of social work regulation results in a wide variety of approaches across the USA (Lightfoot *et al.*, 2016). The metaphor of journey feels apposite in this brief overview, with significant differences between countries, each at different points on their travels.

Authors such as Beck (1992) and Harmon *et al.* (2013) have reflected on the 'risk society' that characterises modern life and the perpetual uncertainty we face as individuals. Correspondingly, governments require various forms of institutionalised mitigation of risk, one of which is regulation. But there is also no coincidence that some degree of congruity exists with central government led changes in social work regulation and high-profile (often child protection) cases where there appears to be a significant performative element in government strategies to manage risk (Manthorpe and Stanley, 2004; Vogel, 2012). The phrase, 'blame prevention re-engineering' describes how regulatory policy and political responses can be constructed to 'cover the back' of government (Hood, 2001, 2011). New shapes and structures for regulation perform a useful function for government when things go wrong. Systemic failings can be redrawn as failings of practice (and practitioners) and its regulation—rather than central or organisational policy or funding. This tactic is not confined to social work, of course. Rothstein *et al.* (2013), looking at several European professions, concluded that regulation as 'risk management' was not limited to the sense in which regulatory governance protects the public but also how it managed the risk to governments and the avoidance of blame.

Problems with regulation

Contemporary professional regulation has been critiqued in a number of ways and there have been fundamental questions raised about its

effectiveness and credibility. Some authors, such as Parker (2009), writing about psychology, express concern around the normative character of regulation where 'official' moral standards and types of knowledge are in danger of producing an uncritical conformity to prevailing mores. Kiepek *et al.* (2019) looked at drug use amongst Canadian social workers and examined how the regulatory gaze extends beyond the work life into the personal—and how constructions of 'conduct unbecoming' can become focused in regulatory terms on respectability rather than risk to service users. This extension of remit is highlighted by Hood who notes the growth of complex, costly, 'risk regulation' regimes which arguably have a direct interest in securing greater numbers of registrants and enhancing their regulatory functions (Hood *et al.*, 2001). More fundamentally, Postle (2012) warns of the dangers of being reduced to a 'tick box' approach by regulation in essentially unsuitable, complex practice arenas.

In broad terms, social work has seen the management of performance largely conducted through the use of professional forms of supervision (Beddoe and Maidment, 2015). However, as the complexity of contemporary social work increases, supervision's ability to hold a focus on professional development, as well as to ensure responsibilities are managed, is challenged. Yet, evidence suggests that this challenge can be met. Mo *et al.* (2021) offer a persuasive, global account of the development of knowledge in social work supervision from which can be noted particularly its embrace of organisational change and functions related to the maintenance of standards as far back as the 1970s. Iosim *et al.* (2021), in a large-scale piece of research, noted the efficacy of supervision in ameliorating burnout in Romanian social workers. These ideas are connected in research from New Zealand which underlined the vital role of safe, 'learning communities' and other such 'spaces' for child protection social workers in both skill development and accountable practice (Rankine and Thompson, 2021). These notions are echoed in Beddoe *et al.*'s (2022) fifteen-month ethnographic study of two English social work teams which highlighted the tension between spaces designed for reflective supervision and accountability:

> Ideally, supervision should hold this tension, providing both sanctuary from the seemingly ceaseless demands of busy practice environments and the freedom to hold 'not-knowing', uncertainty, creativity and a safe space where one can be one's authentic self and imagine better practice. (Beddoe *et al.*, 2021, p. 4)

But supervision cannot always contain all these demands, practice can fall below professional standards and trigger regulatory intervention. FTP processes are one of the most significant challenges facing both profession and regulator. Each of SWE's registrant social workers are subject to penalties through a FTP system should their practice or behaviour fall below that indicated by the standards. There are some notable

features of this process that warrant mention. Firstly, research has shown the huge personal impact that these proceedings can have, regardless of outcome (see e.g. Worsley *et al.*, 2017). Second, there are some aspects of the (English) social worker's experience of regulation that appear to differ from other sister professions. In 2019, the HCPC regulated sixteen different professions and carried a total register of around 360,000 practitioners. One of their reports indicated how social workers accounted for 25 per cent of the register, but 55 per cent of the FTP cases. Social work had, by some margin, the highest percentage of its registrants (1.42 per cent) subject to such concerns (HCPC, 2019). Furthermore, this is a hugely costly business where the HCPC spent nearly 50 per cent of its entire income on the processing and prosecution of FTP cases (HCPC, 2019).

Parallel to these FTP problems, one must note the turbulence in the arena of professional standards for social workers and significant shifts in what we might term the 'soft' regulatory landscape. 'Soft' is used as these standards are not enshrined in legislation but operate in—and influence—the same space (Jacobsson, 2004). For example, in the UK, the Department for Education (DfE) led Teaching Partnership programme (which links local Higher Education Institutions with large-scale social work providers such as Local Authorities) produced, through its approval process, a set of 'soft' regulation requirements around entry standards, curriculum and practice learning, before funding would be awarded. Furthermore, we have seen a centrally (largely DfE) driven proliferation of standards linked to areas of post qualifying social work practice which is not regulated by SWE but arguably creates a confusing landscape for the profession. The probationary system of Assessed and Supported Year in Employment was augmented by a range of Knowledge and Skills Statements (e.g. Department for Education, 2018). The (recently withdrawn) National Assessment and Accreditation System cost in excess of £24 m and yet accredited only 1,700 social workers (Community Care, 2021). The resulting picture suggests a devotion to centrally driven innovation and (soft) regulatory activity with an apparently unshakeable belief in the power of both to improve delivery. The sheer cost (and opportunity cost) of these hard regulatory processes and soft central initiatives must give us pause for thought and ask if there might be a better way?

Is there a better way for regulation?

Upstreaming and formative spaces are concepts that perhaps suggest a way forward. The concept of 'upstreaming' has been around since the 1970s, originally linked to public health policy narratives rather than regulation per se. The term was coined by McKinlay (1979) who used the analogy of a flowing river to critique health services, which he likened to

rescuing people from the river—but never looking upstream to find why they had first fallen in. This attention to 'downstream endeavours' implies short term, case by case interventions that do not engage with fundamental and systemic failings that lie upstream (McKinlay, 1986). McKinlay (1986) argued forcefully that whilst a focus on upstreaming may be more long term and complex it would ultimately lead to better outcomes and reduce the need for downstream interventions. Looking 'upriver' is one thing but, to extend the metaphor, you need a boat to do so. One avenue to explore here is the concept of formative spaces which stems originally in the work of Fischer (2012) who theorised around organisational 'turbulence' in a longitudinal ethnography of a UK mental health, therapeutic community setting. He argued that turbulence is a natural phenomenon for complex organisations but the management of such 'trouble' can be positive, despite the usual negative characteristic of turbulence. He argued that where organisations are in what he called a 'restorative mode' they can generate 'formative spaces' which could host creative, productive functions whereas 'perverse' spaces were characterised more by organisational dysfunction and crisis. The formative spaces afforded opportunities to reflect on difficult areas of practice:

> '... by cultivating a reflective, shared endeavour and 'slowing things down', the (organisation's) methods promote restorative relations. Eliciting alternative perspectives and solutions encourages gradual integration of inner experience and social 'reality', restoring relations and leading to collective learning.' (Fischer, 2012, p. 1167)

Methodology

Given the problems with regulation we have outlined above, it appears valid to examine the potential that new approaches might offer to practice. To that end the author constructed a small-scale research project to examine these possibilities and how they might be implemented around the research question: can formative spaces and upstreaming enhance practitioners' experiences of regulation? The author gained university ethical approval for a small-scale series of in-depth interviews ($n = 10$) with experienced (defined as three or more years into practice) social work practitioners situated in a range of statutory settings including Local Authorities, County Councils and NHS trusts. Recruitment was conducted via an open call email and accompanying information sheet noting the qualities of the respondents sought. The call was circulated through networks of practitioners linked to the 'Teaching Partnerships'. None of the respondents were previously known to the author. The semi-structured interviews were all conducted online via Microsoft Teams and transcribed through the Teams software with the recorded

video being reviewed to ensure accuracy. The transcriptions were sorted into basic analytic files related to the interview schedule.

Broadly, analysis was done within Braun and Clarke's (2021) thematic approach and transcriptions were coded and themed. One of the potential weaknesses of thematic analysis is its flexibility—it is perhaps an overly accommodating approach that can get employed in too many different ways amongst researchers. To address this weakness, it is therefore important to clarify orientations and assumptions (Kiger and Varpio, 2020). Consequently, a deductive approach was pursued, and this led to a mostly semantic process of coding (focusing on what was said) but was also informed by more latent analysis as the author sought to understand some assumptions underpinning the data (Byrne, 2022). Deductive theme development was directed by existing concepts and ideas specifically, in this instance, a paradigm derived from concepts of upstreaming and formative spaces (Braun and Clarke, 2021). Thus, the original data collection tool reflected the relevant literature already outlined above and analysis is situated within that literature (Aronson, 1995; Tuckett, 2005). It was important to ensure a shared level of understanding around these key concepts and the schedule specifically afforded space for explanation before asking such questions as: Do you think there is a useful function (upstreaming and formative spaces) that could serve in social work? What might that be? How do you think these ideas might apply in your setting? Where might they be most/least useful?

It is important to stress that the questions did not explore any personal experiences of performance management, and this was made clear in the consent process. The respondents were well positioned to answer these structural questions, but inhabited slightly different roles, including Local Authority Designated Officer ($n = 1$), Senior and Advanced Practitioner (5), Professional Lead (2) and Consultant Social Worker (2). Broadly speaking, all the respondents held senior professional roles that held significant shared elements of (high) levels of experience, with a majority possessing functions related to performance management, practice development and professional standards. Roles are not differentiated in the analysis due to the identifiability of these high-profile posts, but it is noted that there were no discernible significant differences between the clusters of roles. The findings of this small sample are presented simply as illustrative of some current senior practitioner experiences and opinions. Unless otherwise stated, quotes broadly reflect a commonly expressed view.

Findings: performance management and SWE

Findings are presented under three thematic headings: performance management, upstreaming and formative spaces to report respondent's

experiences and opinions about these issues. As discussed above, supervision is a key element in the broad 'management' of practice. It is interesting to note that all those interviewed recounted broadly positive experiences of supervision but not of appraisal which, in this small sample, was almost universally absent. It was generally reported that supervision tended to benefit from encouraging balances between instrumental and expressive elements (Kadushin and Harkness, 2014) ensuring, perhaps, a deeper quality of supervision—and firmer platform for one-to-one debate around complex and challenging issues:

> I feel that my manager manages my performance adequately through supervision anyway, and so you know, we don't have a formal appraisal. We haven't had a formal annual review as such, but I feel like I'm... you know, we're on track.

Regarding SWE, from this small sample, its penetration into the working lives of social workers appeared largely limited to the renewal of registration process—unless there was a direct link through the worker's role. A typical comment was:

> We never really discuss Social Work England...

Even so, from this sample, there were some quite negative comments about the regulator, such as this comment regarding the experience of registration renewal:

> Social Work England is very much on my table and to be honest with you I really don't have much faith in them. I ... well, I found everything about them, even from the inception of them to be quite threatening ...

Furthermore, even in roles that involved ongoing (FTP) interactions with the regulator, they had not always been perceived positively:

> ... in terms of experience of engagement with them as a regulator, have to say it's not been the greatest...

These comments (and those around appraisal) suggest a certain distance from the regulatory body that might prove a hindrance to actions designed to bring regulatory function ('from' the regulator) into the workplace. However, it may be that using a more localised starting point, such as the positive experiences of supervision, might be a better place to look for more formative, upstreaming actions.

Moving to more problematic areas of practice, unless directly related to role, practitioners had limited awareness of performance management, although it was clearly something of which respondents were wary and thought might lead to dismissal:

> ... so, I know colleagues who have been on performance management. But again, it's quite secretive and it's something ... , and it's something

> to be kind of feared really, (…). It's not seen as a positive thing. It's seen as very much like you're likely to be going.

A related issue which arose for some was the competing 'soft' regulatory elements discussed above, that affect practice:

> Now what we do in regard to performance management is we continue to use the standards, (…) we've had to come to an agreement 'cause of the turf war that goes on between the PCF*, the KSS and Social Work England standards.
> [*Professional Capabilities Framework]

This statement, although representing a view only shared between two respondents, offers a helpful illustration of how localised reflection might be needed to process competing regulatory demands and their complex structures—where centralised (hard and soft) standards are developed in seeming isolation from each other—and from the professional workers they seek to influence and guide. The interviews then moved into more solution orientated areas.

Findings: upstreaming

How professionals gain understanding from various forms of knowledge to improve practice is obviously a broad issue and respondents underlined in various ways the importance of the matter ('we can't not learn'). Here, we were focusing specifically on upstreaming in the sense of learning from FTP data. This was generally seen as the right and obvious thing to do,

> … the regulator should be highlighting that, picking that up and thinking, well, there's something going on here …

There was a generally shared perception that whilst not all 'data' were 'information', useful knowledge applicable to each area could be fed locally into various organisational processes to reflect upon:

> So, it might be a good idea to have this information, but it needs to be useful information and not just based on, you know, the odd case here and there that's not relevant to employers… but if there's not themes, I think you're going to struggle …

There was a largely uniform view that a more localised approach to performance management worked better for practitioners, often because it was able to situate the 'issue' in the local context and home organisation:

> There's a balance between having it done in house where people will probably have better knowledge of the local area and of the context of what happens in [the organisation].

For respondents whose roles linked closely to the regulator, there was a consistent concern around the threshold criteria (and timing) that might be used to inform the decision as to whether to refer to the regulator or not …

> … I said at what point do you refer into [the regulator]? And there was a mixed response, and these are people who were kind of, you know, leading the organisation. And it was one person that said, well, actually, I think you only refer when it's safeguarding. So, I think whether you're an employer or whether you're a member of the public, it's not clear at what point you make the referral …

Guidance for employers does exist and is stated on the SWE website but does not make specific reference to safeguarding when it defines seriousness (SWE, 2021). One could certainly argue that the guidance is quite detailed and, for example, checks are noted around ensuring concerns that are fair and not biased. It would appear from this small sample that the message is simply not getting through

> people don't know where that line is, and they don't know that they've crossed it.

Findings: formative space

Universally supported in the sample was the notion of some kind of internal, formative spaces with all respondents seeing the case for some structure to support this activity. This was often couched in an understanding of the complexity of the contemporary social work role:

> What I'm really keen for when we come out of this blooming children's social care review is just do away with 20 processes please, because that's not helping us. And you know, if somebody is really stressed and pressured and trying to understand [internal processes] … [they are] more likely to go into, you know, adverse coping mechanisms because they're just overrun with info.

There was general support for a localised process that understood the local context but was partly removed from it too:

> … having somebody who's not involved in all that, who doesn't have all that contextual information, doesn't understand the complexity and all that. Knowing how all the things feedback, the kind of personalities and the culture of the area, but a bit more kind of potentially objective. They can kind of sit outside it.

In the final section of the interviews with practitioners, I examined how one might implement practices related to upstreaming and formative spaces. I had expected to find nascent forms of organisational structures and processes that might possess capacity to develop these elements. In

fact, in most cases, respondents were able to point to positive systems and processes that already existed within their organisations that might house or, indeed, currently carried both upstreaming and formative functions.

> Obviously, we don't want staff to end up in fitness to practice, but that doesn't mean it will never happen. It just means we try and learn from it … (…) as a regulator, they are quite sort of distant and don't have a place in the sort of day-to-day professional role.

The researcher was informed, by most respondents, of a promising range of activity: internal training sessions, Human Resources groups, 'learning circles', development meetings and the like that were already in operation and apparently performing well in supporting and developing staff. In one practitioner's organisation, efforts to address these broader issues have resulted in the creation of a significant intervention that encapsulated notions of upstreaming and formative space:

> [… we are] trying to create a climate where it's OK to make mistakes, but it's how we learn and how we move forward from that … how we can see that change rather than just always staying the same and always doing things the same way …

The organisation had developed a relatively new system of support for social workers, a strengths-based approach to staff development which supports staff subject to 'pre' and formal capability proceedings by providing developmental opportunities to address performance issues 'before' they become problematic. It was set up, in part, to deal with the lack of guidance for managers dealing with these issues. Working in conjunction with HR and linked learning development roles whilst utilising research in practice resources, the scheme aims to recognise the support needs of social workers, understand any contributory factors affecting performance and 'see the wider perspective' with a focus on support and guidance. This positive outlook and 'starting on the right foot' follows a process which supports and encourages engagement. The team delivering this intervention do not sit within the line structures.

> … the managers tend to like it because we don't sit within the management structure, they tend to ask us to be involved when it's at learning and development plan stage. You know, like so we've got an issue. Can you help us put in something for a defined period of time which can help support this worker?

These findings, limited as they are, demonstrate a perceived weakness in the relationship with the regulator, but clear strengths in localised interventions building on positive outlooks. They portray social work organisations looking to develop innovative interventions to proactively engage with performance issues.

Discussion

One of the features of regulation is its largely reactive function—it responds to a stimulus. At its heart, social work regulation is to 'protect the public' through the maintenance of a register (SWE, 2021). This is essentially a reactive function, focusing solely on the individual, their 'offence' and its punishment. There is also a passivity, in that any resultant action (and learning) is limited to the individual and not, for example, to an organisation or wider profession. Might it be better to divert attention more to measures aimed at prevention? Extending McKinlay's analogy, might it be that we should not simply focus on moving upstream in a regulatory river, but rather move the river itself—localising the discourse around standards of professional practice into those venues where it takes place and is best understood?

I want to present two initial underpinning suggestions where a more upstreaming mindset could be developed within such an environment. The first is to develop a more rigorous, data driven, research-mindedness in regulatory activity. If we consider, for example, a recent FTP report (HCPC, 2019), we find all manner of descriptive statistics regarding FTP numbers, where referrals emanate, types of issues, disposals and so on—yet the regulator seemingly devotes little effort to moving this data beyond its descriptive reporting. There is a certain irony in the fact that the owners of the biggest repositories of data on professional malpractice in this field do not, as far as one can see, harness that information effectively to turn it into knowledge that might improve services and better protect the public. At the time of writing, SWE had not published a similar report.

The second suggestion for upstreaming is around qualifying curricula. I have noted above the range of standards surrounding qualifying education, but there is surprisingly little guidance on what social work students should be taught—nor how they should be taught it. SWE's standards do not directly relate to curriculum content. Section 4.1 of the current Education and Training Standards relates to curriculum and assessment but says only that programmes must 'ensure that the content, structure and delivery of the training is in accordance with relevant guidance and frameworks' (SWE, 2020). The 2019 Quality Assurance Agency Benchmarking Statements for Social Work offers by far the most complete guidance on curricula (QAA, 2019) but are curiously not referred to in the SWE guidance. The Benchmarking Statements reflect a range of research-based evidence of 'what works', almost exclusively generated by the (international) academic sector. Similar arguments accrue around pedagogical research and which methods of teaching might create the best outcomes for professional students. I argue strongly that a regulator needs to bring an 'upstreaming' research mindedness to inform and

shape a new curriculum for social work education, one which simply reflects the best current evidence to create the best social workers.

The qualifying curriculum is, of course, only one element of regulation and we need to consider how we might make positive steps forward to address the issues raised upstream 'in practice'—somewhere we might channel the learning from a more research-minded approach to regulation. I have noted the inevitability of turbulence in practice and how the regulatory landscape affects practitioners and hence the need for some mechanisms on the ground to help the profession manage these challenges. If the approach is entirely 'formal' then it may well be that we are creating perverse, unproductive spaces whereas, if we can focus more on restorative actions, we can improve delivery (Fischer, 2012). One of the reasons Fisher's excellent, but relatively modest, research is noted is that these concepts were transferred into a more overtly regulatory frame by the Professional Standards Authority (PSA) and were promoted in their report, 'Right Touch Reform' (PSA, 2017). The PSA oversee and monitor the performance of ten different Health and Social Care regulatory bodies in the UK, such as those relating to doctors, nurses, dentists and social workers. As such they are an important element of the regulatory framework underpinning the sector. The PSA has recognised and promoted the use of formative spaces—where 'regulator-sanctioned confidential discussions between colleagues about problematic areas of practice … (could be held) … , even though these discussions may be outside the direct control of regulators' (PSA, 2017, p. 27). As the PSA notes, this is not without its challenges especially where the regulator might be concerned that important information may not appropriately reach the regulator. However, the opportunity formative spaces present to create positive organisational (and professional) development appears considerable.

We have seen from the respondent's data that many organisations have already developed a range of interventions that provide direct evidence of the social work workplace operating within what Fisher (2012) termed a 'restorative mode': finding space for thoughtful, creative responses to practice turbulence and enabling collective learning. Clearly, the respondents indicated a certain level of disconnect from the regulator and one might infer from their comments that whilst SWE is not (yet) the vehicle to drive the development of formative spaces it may well have an important role in facilitating them. The notion from the PSA (2017) of 'regulator sanctioned' spaces for these difficult discussions seems especially helpful. Such developments might also include the management of this standards 'turf war'. Finding professional spaces to process issues relating to hard and soft regulatory standards would seem useful and it is important to acknowledge the potential that good supervision provides in this regard.

I noted above the respondent's positive experiences of supervision, and it seems appropriate to consider the opportunity that space offers (both within and outside line management) as a receptacle for upstreaming and research mindedness. Research previously mentioned has shown the importance of supervision as a place capable of holding the tension between reflection and accountability. Exactly how these spaces are constructed within the local setting has, according to Beddoe *et al.* (2021) enormous bearing on their efficacy in managing the different functions expected of them. One of the interesting findings from the interviews was the general view that removing supervision from the immediate line management/supervisory relationship, where performance issues had arisen, was seen as a positive step. Such an approach retains the expertise in professional support, supervision *and* the local knowledge of organisational conditions, whilst allowing a certain distance from the immediate line management arrangements.

How such activity relates to the regulator seems to be problematic as the link between frontline practice and regulator appears relatively weak at this juncture. This may be linked to the succession of 'hard' regulators, together with the complexity of soft regulation that we outlined above. But England is not alone in experiencing such a dissonance. Looking once more at the European experience, Tier *et al.* (2021) examined social work supervision in the Netherlands, Belgium and Germany—focusing on those working with the homeless. Albeit from a relatively small sample, their evidence supported the notion that localised understanding was vital for effective, supportive supervision, but also of the limits of the respondent's professional obligations to government, which was seen more as a strategic mechanism often to secure funding for their services. Lightfoot *et al.* (2016), considering social workers in the USA, add to this complexity noting a certain sense of ambivalence around the relationship with regulation, identifying that many social workers held concerns around the 'clinical' orientation of the licensing system not representing the community orientation of their social work role. Finally, Taylor and Campbell (2011) examined issues around social care governance in Northern Ireland and present strong evidence that it is practice development processes that engage professionals—rather than didactic forms of teaching around governance and regulation.

Perhaps, here we begin to see how the gap between professional regulation and performance management might be mended—and provide a platform for upstreaming and formative spaces. Evidence considered here suggests the need is for locally developed processes to adopt these kinds of functions, which are sensitive to those located in line supervision and where they might better be displaced to different strands of organisational activity. And this, I argue, is an important distinction—organisations need to understand the limits to what can be achieved in performance management within the supervisory relationship and to develop different, detached (but localised) systems to support workers so as to develop their

practice into more overt alignment with the standards expected in the profession. In this way, we don't simply follow the river upstream—but rather move the river itself, adjusting the current balance of managing performance more into social work organisations and away from the regulator.

Limitations

This article offers a largely theoretically driven approach to the subject of regulation, with a strand of primary data designed to reveal insight and inform. Limitations include a relatively narrow range of roles inhabited mostly, but not exclusively, within Local Authority structures. Demographic data of respondents were not collected for this study. Deliberately removed from this study was the personal experiences social workers may have had of FTP procedures [although this is captured elsewhere by the author (Worsley *et al.*, 2017, 2020a)]. As is often the case in qualitative research, data saturation was a significant consideration in recruitment of respondents and after the interview element of design was completed data saturation was felt to be achieved.

Conclusion

Clearly, there is some evidence that positive, proactive spaces are being developed in organisations and they have great potential to support upstreaming and formative actions. These spaces might also act as destinations for knowledge gained by the development of a more research orientated, localised approach to regulation and the dissemination of the regulator's largely untapped knowledge. This article has outlined a turbulent period for social work in England—involving major shifts in regulation and increasing 'soft' regulatory activity. There is little evidence that the stream of centrally driven policy initiatives will slow, so it is reassuring to see that constructive ways forward are already being shaped in the sector in response—and evidence is growing that SWE should work with others to consider shifting the balance of its activities, working more with employers and practitioners to foster such developments. Helping stop practitioners from 'falling in the river' is likely to improve services more than reactive downstream endeavours. Moving the river in a way that is sensitive to the local terrain may better protect the public and the profession.

Conflict of interest statement

The author is currently active as a Lay Inspector for Social Work England.

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